

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT  
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Waste Water Management, Inc.  
Homestead at the Gap Subdivision  
P.O. Box 524  
Vilonia, AR 72173

LIS No. 22- **073**  
Permit No. AR0052922  
AFIN 23-01259

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 Waste Water Management, Inc. – Homestead at the Gap Subdivision (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 domestic wastewater treatment facility (“facility”) located at the intersection of Sunny Gap Road and Pickles Gap Road, Conway, Faulkner County, Arkansas.

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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 Palarm Creek, thence to Palarm Creek, thence to Lake Conway, thence to Palarm Creek, thence to the Arkansas River in Segment 3F 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 AR0052922 (“Permit”) to Respondent on December 26, 2018. The Permit became effective on January 1, 2019, and expires on December 31, 2023.

10. On February 8, 2021, DEQ issued a Permit modification to Respondent. The Permit modification became effective on March 1, 2021, and expires on December 31, 2023.

11. On September 8, 2021, DEQ conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.

12. 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 February 1, 2021, through July 31, 2021:

- a. Five (5) violations of Fecal Coliform Bacteria;
- b. Four (4) violations of Total Phosphorus;
- c. Three (3) violations of Ammonia Nitrogen; and
- d. One (1) violation of Carbonaceous Biochemical Oxygen Demand.

13. Each of the thirteen (13) discharge limitation violations listed in Paragraph 12 above constitutes a separate permit violation for a total of thirteen (13) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

14. The review of DMRs revealed that Respondent reported an invalid No Data Indicator (NODI) Code P to denote "Laboratory Error or Invalid Test" for the monitoring period ending March 31, 2021. Although a Non-Compliance Report (NCR) was submitted to explain the reason for reporting the invalid NODI Code, failure to report sample results for the permitted parameter is a violation of Part I, Section A of the Permit and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

15. On September 9, 2021, DEQ sent Respondent a letter requesting a Corrective Action Plan (CAP) to address the violations of the permitted effluent discharge limitations. 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. DEQ also requested that Respondent submit the contract laboratory name, and laboratory data with chain-of-custody records from February 1, 2020, to July 31, 2021.

16. On September 15, 2021, Respondent submitted the contract laboratory name, laboratory data, and chain-of-custody records as requested by DEQ on September 9, 2021.

17. On October 8, 2021, Respondent submitted a CAP to DEQ with a final compliance date of March 1, 2023, to finish construction of phase two.

18. On October 14, 2021, DEQ sent Respondent a letter approving the CAP and requesting that Respondent submit a frequency schedule for the operator's inspections and bi-monthly progress reports.

19. On October 21, 2021, Respondent submitted a Revised CAP to include the minimum inspection frequency schedule for the operator. The Revised CAP contained a final compliance date of March 1, 2023.

20. On November 15, 2021, DEQ conducted a follow-up review of certified DMRs submitted by Respondent in accordance with the Permit from August 1, 2021, through September 30, 2021.

21. The follow-up review of DMRs revealed that Respondent reported invalid NODI Codes 8 and P to denote "Other (See Comments)" and "Laboratory Error or Invalid Test," respectively, for monitoring periods ending August 31, 2021, and September 30, 2021. Although NCRs were submitted to explain the invalid NODI Codes, failure to report sample results for the permitted parameters is a violation of Part I, Section A of the Permit and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

22. The follow-up review of the DMRs also revealed that Respondent failed to conduct analysis for Total Suspended Solids and Carbonaceous Biochemical Oxygen Demand for the

monitoring period ending August 31, 2021. The failure to conduct analysis of the parameters is a violation of Part I, Section A of the Permit and is therefore a violation of 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 of March 1, 2023, contained in the approved Revised CAP dated October 21, 2021. The milestone schedule and final compliance date of March 1, 2023, 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 March 31, 2023.
3. On or before the effective date of this Order, Respondent shall correct the August 2021 DMR that contained the invalid NODI Code 8, to denote "Other (See Comments)" for parameters Nitrate+Nitrite-Nitrogen and Fecal Coliform Bacteria.
4. Respondent shall sample and monitor the effluent in accordance with Part I, Section A of the Permit.
5. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Six Thousand Six Hundred Dollars (\$6600.00), of which Four Thousand Six Hundred Dollars (\$4600.00) 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 Four Thousand Six Hundred Dollars (\$4600.00) 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 Six Thousand Six Hundred Dollars (\$6600.00) shall be payable immediately to DEQ. Payment of the civil penalty in the amount of Two Thousand Dollars (\$2000.00) 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.



12. 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 23<sup>rd</sup> DAY OF JUNE, 2022.

  
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JULIE LINCK, CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

Waste Water Management, Inc. – Homestead at the Gap Subdivision

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

Alon M Centre  
\_\_\_\_\_  
(Typed or printed name)

TITLE: owner / operator

DATE: 5-25-22