

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT  
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Concord Water and Sewer Public Facilities Board  
P.O. Box 622  
Van Buren, AR 72956

LIS No. 22- **086**  
Permit No. AR0050938  
AFIN 17-00070

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 Concord Water and Sewer Public Facilities Board (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 minor municipal wastewater treatment facility ("facility") located at 618 Johns Road, Van Buren, Crawford County, Arkansas.
2. Respondent discharges treated wastewater to an unnamed tributary of Flat Rock Creek, thence to Flat Rock Creek, thence to Hollis Lake, thence to Flat Rock Creek, thence to the Arkansas River in Segment 3H of the Arkansas River Basin.

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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.

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:  
  
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(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 AR0050938 (“Permit”) to Respondent on May 6, 2019. The Permit became effective on June 1, 2019, and expires on May 31, 2024.
10. On August 11, 2021, DEQ received a complaint of a strong smell of raw sewage emanating from Flat Rock Creek, and the presence of dead fish in and near the creek.

11. On August 11, 2021, DEQ contacted Respondent and requested that they investigate the situation and report back to DEQ with their findings.

12. On August 12, 2021, Respondent notified DEQ via phone that the pollution was being discharged from the facility and they had ceased the discharge and began corrective actions.

13. On August 12, 2021, DEQ conducted a compliance evaluation inspection of the facility.

The inspection revealed the following violations:

- a. Influent and effluent samples have not been taken to ensure the 30-day average percent removal for Carbonaceous Biochemical Oxygen Demand and Total Suspended Solids is at least eighty-five percent (85%). This failure is a violation of Part II, Condition 2 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
- b. On August 11, 2021, pollutants were introduced to the treatment plant that caused Pass Through or Interference to the facility operations. This is a violation of Part II, Condition 7.A of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
- c. The pretreatment program has not been developed. The required activities specified in the schedule of compliance have not been completed. This is a violation of Part I, Section B and Part II, Section 7.B of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
- d. The following operation and maintenance violations were observed:
  - i. One of the three influent pumps is inoperable and needs repair;
  - ii. One brush in the oxidation ditch is inoperable and needs repair; and
  - iii. Clarifier number 2 is not in operation due to the curtain failing.

These conditions are violations of Part III, Section B, Condition 1 of the Permit and therefore are violations of Ark. Code Ann. § 8-4-217(a)(3).

- e. Additional monitoring is not being reported on the corresponding Discharge Monitoring Reports (DMRs). The records review revealed Respondent performed additional monitoring in March 2021 and April 2021, but failed to report these monitoring results on the DMR. This failure is a violation of Part III, Section B, Condition 6 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
- f. Duplicate measurements are not recorded for field parameters (Dissolved Oxygen, pH, and Total Residual Chlorine). These should be recorded on the sample Chain of Custody forms. This failure is a violation of Part III, Section C, Condition 3 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
- g. Noncompliance reports (NCRs) have not been submitted when effluent does not meet permitted discharge limitations. This failure 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).

14. During the inspection performed on August 12, 2021, DEQ went to the site of the fish kill and observed the following:

- a. The water downstream was black with very low visibility;
- b. There was an odor downstream that smelled of sewer or dead fish;
- c. Dissolved oxygen readings taken downstream were very low; and

- d. The property owner dammed the creek. There was no flow downstream of the dam, but a pool of brown turbid water was found near the downstream-side of the dam.

15. On August 11, 2021, and August 12, 2021, the Arkansas Game and Fish Commission completed a Fish Kill Survey for the affected area of Flat Rock Creek. The study concluded that the pollution that entered Flat Rock Creek from the facility killed 5517 fish, including Largemouth Bass, Black Crappie, Bluegill, Longear Sunfish, Green Sunfish, Black Bullhead Catfish, and assorted minnow species. The unauthorized bypass of partially or untreated wastewater from the treatment facility and resulting pollution of the waters of the state violated Ark. Code Ann. § 8-4-217(a)(1), and therefore violated Ark. Code Ann. § 8-4-217(a)(3).

16. On September 1, 2021, DEQ received a copy of the Incident Investigative Report from the Arkansas Game and Fish Commission (AGFC), which included observations of the environmental impact and fish kill from the pollution that entered Flat Rock Creek from the facility. The report estimated the total number of fish killed to be 5517 fish.

17. On September 1, 2021, Respondent notified DEQ via email that discharge from outfall 001 had resumed and laboratory analysis of the discharge sampling results was being conducted.

18. On September 7, 2021, DEQ received the Fish Kill Report from AGFC. The report detailed the various species of fish killed and estimated the total number of fish killed to be 5490. The total monetary value of fish killed in Flat Rock Creek was estimated to be Four Thousand One Hundred Ninety-three Dollars and Forty-three Cents (\$4193.43).

19. On September 7, 2021, Respondent submitted a weekly progress report that included the laboratory analysis of the discharge samples taken from the permitted outfall 001 on September 1, 2021. The results were in compliance of Part 1 Section A of the Permit.

20. On September 10, 2021, Respondent sent DEQ an email stating that the following repairs had been made at the facility since DEQ's August 12, 2021 inspection:

- a. The curtain that separates the influent from the aeration basin from the inner part of tank where settling occurs prior to going over the v-notch weir was replaced;
- b. The skimmer arm from clarifier #2 was replaced;
- c. The rake from clarifier # 2 was adjusted;
- d. The floating aerator was re-anchored; and
- e. The brush rotor was put back in service.

21. On October 21, 2021, DEQ notified Respondent of the inspection results via certified letter.

22. On October 25, 2021, DEQ conducted a review of certified DMRs submitted by Respondent in accordance with the Permit.

23. 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 October 1, 2018, through September 30, 2021:

- a. Sixteen (16) violations of Carbonaceous Biochemical Oxygen Demand;
- b. Eleven (11) violations of Total Suspended Solids; and
- c. Three (3) violations of Ammonia Nitrogen.

24. Each of the thirty (30) discharge limitation violations listed in Paragraph 23 above constitutes a separate permit violation for a total of thirty (30) separate violations of Part I, Section A of the Permit and thirty (30) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

25. The review of the DMRs also revealed that Respondent exceeded the facility design flow for twenty-seven (27) of the thirty-six (36) monitoring periods reviewed.

26. On October 25, 2021, DEQ sent Respondent a letter requesting the following information:

- a. A Corrective Action Plan (CAP) to address the discharge limitation violations. The CAP was to have a milestone schedule with a final date of compliance and be certified by a Professional Engineer (P.E.) licensed in the state of Arkansas.
- b. A Design Flow/ Inflow and Infiltration Study to address the exceedances of the design flow.
- c. A certification from a P.E. licensed in the state of Arkansas stating that the current wastewater treatment system has been repaired and is operating as designed.

27. On November 30, 2021, DEQ also conducted a review of the reported Sanitary Sewer Overflows (SSOs) and treatment bypasses during the period from August 1, 2018, through November 30, 2021. The review revealed the following violations:

- a. Respondent reported thirty (30) unpermitted discharges from lift stations and manholes totaling more than 5000 gallons. Respondent is permitted to discharge from outfall 001 in accordance with the Permit. Respondent is not permitted to discharge untreated wastewater from its collection system. Each of the thirty (30) unpermitted discharges violated Ark. Code Ann. § 8-4-217(b) and therefore violated Ark. Code Ann. § 8-4-217(a)(3).
- b. Respondent reported nine (9) unauthorized bypasses from permitted outfall 001. Partially treated wastewater and solids bypassed the treatment processes and entered Flat Rock Creek. Each of the nine (9) unpermitted bypasses violated Part III, Section B, Condition 4.C.1 of the Permit and therefore violated Ark. Code Ann. § 8-4-217(a)(3).

28. On December 30, 2021, Respondent submitted a CAP with a final compliance date of April 1, 2025, and a Design Flow/Inflow and Infiltration Study ("I&I Study") with a final compliance date of May 31, 2028.

29. On February 8, 2022, DEQ sent Respondent a letter approving the CAP and the I&I Study submitted on December 30, 2021.

30. On June 15, 2022, DEQ and Respondent met to discuss the approved CAP and I&I Study. Respondent indicated that some concerns had arisen with the approved CAP and I&I Study, and, as a result of these concerns, Respondent is soliciting bids from Professional Engineering Firms to develop and submit a revised CAP.

#### **ORDER AND AGREEMENT**

WHEREFORE, the parties stipulate and agree as follows:

1. Within sixty (60) calendar days of the effective date of this Order, Respondent shall submit to DEQ, for review and approval, a revised 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 and prevent future violations and include a reasonable milestone schedule with a date of final compliance no later than December 31, 2025. Upon review and approval by DEQ, Respondent shall comply with the terms, milestone schedule, and final compliance date contained the approved CAP. The milestone schedule and final compliance date shall be fully enforceable as terms of this Order.

2. Within sixty (60) calendar days of the effective date of this Order, Respondent shall submit an interim operating plan that describes, in detail, the operational measures that will be undertaken to maximize the removal efficiency of all pollutants covered by this Permit



consistently. Respondent shall implement the interim operating plan immediately upon its submittal to DEQ.

3. Within twelve (12) months of the effective date of this Order, Respondent shall develop and submit to DEQ, for review and approval, a Sewer System Evaluation Study (SSES) for its sanitary sewer collection system. The SSES must be certified by a P.E. licensed in the state of Arkansas.

a. The SSES should at minimum have the following elements:

- i. Perform smoke testing in all areas of the collection system, beginning with highest priority areas;
- ii. Perform televising of lines in areas deemed necessary based on smoke testing in order to locate leaks and to determine method of repair;
- iii. Develop a plan to address deficiencies through rehabilitation, repair, or replacement;
- iv. Develop a manhole inspection program, beginning in highest priority area; and
- v. Recommend a method of repair and develop a cost estimate for such. Based on the results of the above studies, Respondent will be able to identify areas requiring improvements and to prioritize those improvements. Short-term and long-term improvements will be considered to remedy deficiencies.

b. The SSES shall include a SSO Plan with a milestone schedule that details the steps Respondent shall take to implement the corrective action fully and expeditiously. Upon approval by DEQ, the SSO Plan and milestone schedule shall be incorporated into this Order by reference and become fully enforceable as the terms of this Order.

4. On or before the fifteenth (15th) day of the month following the end of each calendar quarter and continuing 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 and completion of the SSES.

5. On or before the effective date of this Order, Respondent shall resubmit the DMRs with a monitoring period end date of March 31, 2021, and April 30, 2021, to reflect the additional monitoring performed during those monitoring periods.

6. On or before the effective date of this Order, Respondent shall submit NCRs to DEQ. The NCRs should be submitted for the violations of the permitted discharge limitations reported during the corresponding monitoring period. Respondent shall submit NCRs for all violations reported from January 1, 2019, to current.

7. Within thirty (30) calendar days of the effective date of this Order, Respondent shall submit to DEQ influent and effluent sample monitoring results demonstrating that the 30-day average percent removal for Carbonaceous Biochemical Oxygen Demand and Total Suspended Solids is at least 85%.

8. For the damages and incurred expenses described in Paragraphs 15, 16, and 18 of the Findings of Fact, Respondent agrees to pay the Arkansas Game and Fish Commission the sum of Four Thousand One Hundred Ninety-three Dollars and Forty-three Cents (\$4193.43). Within thirty (30) calendar days of the effective date of this Order, Respondent shall send a check payable to the Arkansas Game and Fish Commission, but mailed to:

The Chief Administrator of the Environment  
Division of Environmental Quality  
5301 Northshore Drive  
North Little Rock, AR 72118-5317

9. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Twenty Thousand Fifty Dollars (\$20,050.00), of which Ten Thousand Dollars (\$10,000.00) is 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 Ten Thousand Dollars (\$10,000.00) 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 Twenty Thousand Fifty Dollars (\$20,050.00) shall be payable immediately to DEQ. Payment of the civil penalty in the amount of Ten Thousand Fifty Dollars (\$10,050.00) 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. Each of the undersigned representatives of the parties certifies that he or she is authorized to execute this Order and to legally bind that party to its terms and conditions.

SO ORDERED THIS 8th DAY OF August, 2022.

  
JULIE LINCK, CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

Concord Water and Sewer Public Facilities Board

BY:   
(Signature)

John Spence  
(Typed or printed name)

TITLE: Chairman

DATE: 8-4-22