

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Rockport
P.O. Box 442
Rockport, AR 72104

LIS No. 22- **103**
Permit No. AR0052663
AFIN 30-00643

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 Rockport (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 at 1472 Military Road, Rockport, Hot Spring County, Arkansas.
2. Respondent discharges treated wastewater to an unnamed tributary of Francois Creek, thence to Francois Creek, thence to the Saline River, thence to the Ouachita River in Segment 2C 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 AR0052663 (“Permit”) to Respondent on July 26, 2016. The Permit became effective on August 1, 2016, and expired on July 31, 2021. The Permit was administratively continued pursuant to APC&EC Rule 6.201 until DEQ issued the renewal Permit on May 4, 2021, with an effective date of August 1, 2021, and an expiration date of July 31, 2026.

10. On July 9 2021, DEQ conducted a routine compliance evaluation inspection and a collection system evaluation of the facility. The inspection and collection system evaluation revealed the following violations:

- a. Respondent reported forty-two (42) effluent limitation violations from October 1, 2018 to September 30, 2021. These exceedances of the effluent limitations are a violation of Part I, Section A of the Permit and therefore are a violation of Ark. Code Ann. § 8-4-217(a)(3).
- b. Respondent does not employ a Class II licensed wastewater operator. This Failure to employ a Class II wastewater operator licensed under APC&EC Rule 3 is a violation of Part II, Condition 1 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
- c. Respondent has not operated and maintained the facility properly as evidenced by the following conditions. These conditions are a violation of Part III, Section B, 1.A of the Permit and therefore are a violation of Ark. Code Ann. § 8-4-217(a)(3):
 - i. The UV sensors and UV channel were dirty; and
 - ii. The filtration system tank was full and flowing over the internal overflow weir. The filtration system had solids present in the tank.
- d. Respondent last calibrated the effluent flow meter in December 2018 with the next calibration due December 2019. Failure to ensure that both calibration and maintenance activities are conducted on all monitoring and analytical instrumentation at intervals frequent enough to ensure accuracy of measurements 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).

- e. DEQ issued State Construction Permit AR0052663C to Respondent on June 30, 2016, with an effective date of July 1, 2016. DEQ has not received written certification from Respondent that the facility has been constructed in accordance with the approved plans and specifications. Failure to submit written certification through a professional engineer licensed in the state of Arkansas that the facility was constructed or modified in accordance with the approved plans and specifications is a violation of Condition 3 of the State Construction Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

11. On July 28, 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 August 1, 2018 through August 31, 2021:

- a. Eighteen (18) violations of Ammonia Nitrogen;
- b. Twelve (12) violations of Carbonaceous Biochemical Oxygen Demand;
- c. Nine (9) violations of Fecal Coliform Bacteria;
- d. Four (4) violations of Total Suspended Solids;
- e. Three (3) violations of Dissolved Oxygen; and
- f. One (1) violation of pH.

13. Each of the forty-seven (47) discharge limitation violations listed in Paragraph 12 above constitutes a separate permit violation for a total of forty-seven (47) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

14. The review also revealed that Respondent has reported flow data greater than the facility's permitted design flow twenty-three (23) months out of the thirty-six (36) month review period.

15. The review further revealed that Respondent had not submitted Noncompliance Reports (NCRs) for the violations reported during each monitoring period. Failure to report all instances of noncompliance during the monitoring period at the time the associated DMR is submitted 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).

16. On July 28, 2021, DEQ sent a letter to Respondent requesting a Corrective Action Plan (CAP) be submitted by August 31, 2021, to address the effluent violations. DEQ also requested that Respondent contact DEQ to set up a meeting and submit missing NCRs by August 6, 2021.

17. On August 6, 2021, DEQ notified Respondent of the inspection results and requested that Respondent submit a written response to each violation cited in the inspection report to DEQ's Enforcement Branch by September 5, 2021.

18. On August 26, 2021, Respondent requested an extension to September 30, 2021 to submit a written response to the violations cited in the inspection report. DEQ granted the extension to September 30, 2021, for Respondent to submit a written response to the violations cited in the inspection report.

19. Respondent submitted NCRs for the monitoring periods beginning July 2019, through July 2021; however, the NCRs did not contain adequate information regarding the cause of the violations, the plan to correct the violations, or the estimated time to correct the violations.

20. On October 1, 2021, Respondent submitted a CAP with a final compliance date of July 2022.

21. On October 4, 2021, DEQ notified Respondent via letter the CAP was deemed adequate. DEQ requested that Respondent submit quarterly progress reports and contact DEQ to set up a meeting to discuss the CAP.
22. On October 15, 2021, Respondent submitted a Notice of Completion of Construction for State Construction Permit AR0052663C.
23. On November 29, 2021, DEQ and Respondent met via Zoom to discuss the CAP and repeated violations. Respondent agreed to submit a revised CAP and milestone schedule to DEQ by December 10, 2021. To date DEQ has not received the revised CAP and milestone schedule.
24. On December 15, 2021, DEQ notified Respondent that State Construction Permit AR0052663C was terminated and that no further construction is authorized under State Construction Permit AR0052663C.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. On or before the effective date of this Order, Respondent shall submit documentation demonstrating that the effluent flow monitoring device has been calibrated and is operating properly.
2. 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 Professional Engineer (PE) 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 Paragraphs 10, 12, 14, and 15 and prevent future violations. The revised CAP shall include a reasonable milestone schedule with a date of final compliance no later than July 31, 2024. 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.
3. 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 permitted effluent limits set forth in Part I, Section A of the Permit. Respondent shall submit the final compliance report by August 31, 2024.
4. On or before the effective date of this Order, Respondent shall submit to DEQ a written response to the violations documented in the July 9, 2021 inspection.
5. Within sixty (60) calendar days of the effective date of this Order, Respondent shall submit to DEQ documentation demonstrating that the operator has obtained a Class II

wastewater license or that Respondent has obtained the services of a Class II wastewater operator licensed pursuant to APC&EC Rule 3.

6. 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 PE 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. The Study shall detail the methods and best available technologies that will be used to correct the violations listed in Findings of Fact and prevent future violations. Upon review and approval by DEQ, Respondent shall comply with the terms, milestone schedule, and final compliance date. The milestone schedule and final compliance date shall be fully enforceable as terms of this Order.

7. 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) shall be made in ten (10) monthly installments of Two Hundred

Dollars (\$200.00) with the first payment due within thirty (30) calendar days of the effective date of this Order. Each subsequent payment shall be due by the end of each subsequent month, respectively, until the balance is paid in full. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

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

16. 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 OCTOBER, 2022.


JULIE LINCK, CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

City of Rockport

BY: 
(Signature)

Kevin Baker
(Typed or printed name)

TITLE: Mayor of The City of Rockport

DATE: 9/27/2022

Regular Meeting of the City Council
City of Rockport
1472 Military Road, Rockport, AR. 72104

Tuesday, September 27th, 2022

Call to Order:

Mayor Baker called the meeting to order.

Roll Call: Womble, Baker, Hughes and Shuffield. (All present).

Pledge of Allegiance:

Council Member Womble led the group in Pledge of Allegiance.

Open Prayer:

Opening Prayer by Council Member Brenda Womble.

Roll Call:

Roll Call: Womble, Baker, Hughes and Suffield. (All present).

Others Present:

Sgt. Toby Morales and Damon Dyer

Reading of Minutes:

Motion made by Council Member Womble to accept minutes from Tuesday, August, 2002. as read. Motion seconded by Council Member Shuffield.

Womble-Y, Bake-Y, Shuffield-Y, Hughes-Y.

Motion made by Council Member Womble to accept minutes from Friday, Sept. 2nd, 2022 as read. Motion made by Council Member Hughes.

Baker-Y, Womble-Y, Shuffield-Y, Hughes-Y.

Planning Commission:

Motion made by Council Member Baker to appoint Toby Morales as the new head of the Planning Commission. Seconded by Council Member Womble.

Hughes-Y, Shuffield-Y, Baker-Y, Womble-Y.

Police Department:

Motion made by Council Member Womble to accept department reports. Motion seconded by Council Member Hughes.

Shuffield-Y, Baker-Y, Womble-y, Hughes-Y.

Street Department:

Old Business:

Discussion on replacing stop sign at Lady Bug Lane. Waiting on One Call to mark placement.

New Business:

Council discussed Damon, Roger and Jim going to a OSHA meeting in Memphis.

Council discussed rerouting the water line to City Hall, but decided to place on hold till a later date.

Motion to pay \$200.00 per month to ADEQ for the sewer fine was made by Council Member Hughes. Motion was seconded by Council Member Womble.

Shuffield-Y, Baker-Y, Hughes-Y, Womble-Y.

Motion to let Jeremy Stone handle all the reports for ADEQ was made by Council Member Hughes. Motion seconded by Council Member Baker.

Womble-Y, Shuffield-Y, Baker-Y, Hughes-Y.

Motion to Adjourn meeting was made by Council Member Baker. Seconded by Council Member Hughes.

Womble-Y, Shuffield-Y, Baker-Y, Hughes-Y.

Date: 9/27/2022

Approved: K Baker

Kevin Baker, Mayor

Attest: Rebecca Gay