

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT  
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Bearden  
P.O. Box 134  
Bearden, AR 71720

LIS No. 22- 110  
Permit Number: AR0021474  
AFIN: 52-00071

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 the rules issued thereunder by Arkansas Pollution Control and Ecology Commission (APC&EC).

The issues herein having been settled by the agreement of City of Bearden (Respondent) and the Division of Environmental Quality (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 facility<sup>1</sup> ("Facility") located off Hwy 79 B, Bearden, Ouachita County, Arkansas.
2. Respondent discharges treated municipal wastewater to Two Bayou (east), thence to the Ouachita River in Segment 2D of the Ouachita River Basin.
3. Respondent is regulated pursuant to the National Pollutant Discharge Elimination System (NPDES).

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<sup>1</sup> Facility Coordinates: Latitude: 33° 42' 53.85" N; Longitude: 92° 38' 06.27" W.

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 AR0021474 (“Permit”) to Respondent on October 6, 2017. The Permit became effective on November 1, 2017, and expires on October 31, 2022.

10. Part III, Section D, Condition 10 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.

11. Respondent intends to operate this Facility beyond the expiration date of the current permit, October 31, 2022.

12. On November 1, 2021, and February 1, 2022, DEQ notified the Respondent that the Permit would expire on October 31, 2022, and that in order to continue the regulated activity, a complete renewal application must be submitted no later than May 4, 2022.

13. On April 26, 2022, DEQ received a Permit renewal application from Respondent.

14. On April 28, 2022, DEQ notified Respondent that its Permit renewal application was incomplete with the following deficiencies:

a. DEQ Form 1

i. Section A.10 requires submittal of a location map.

ii. Section B.1 requires submittal of a topographic map showing a minimum of one mile around the property boundary of the Facility. The outfall location must also be marked on this map.

iii. Section B.2 requires a description of sample collection methods.

iv. Section B.2 requires a description of flow measurement methods.

v. Section B.2 requires submittal of a process flow diagram of the wastewater treatment plant.

vi. Sections B.3, B.4, and B.5 must be completed.

vii. Section B.3 requires submittal of a FEMA flood plain map.

b. EPA Form 2A must be submitted.

15. On May 5, 2022, DEQ received an updated Permit renewal application from Respondent.

16. On May 10, 2022, DEQ notified Respondent that the Permit renewal application submitted on May 5, 2022, was incomplete with the following deficiencies:

- a. DEQ Form 1, Question B.4 must be completed.
  - b. The old version of EPA Form 2A was received. EPA and 40 C.F.R. Part 122 require the use of the most up-to-date form. EPA Form 2A is available on the Division's website.
17. On June 30, 2022, Respondent submitted an updated Permit renewal application. On July 11, 2022, DEQ notified Respondent that its Permit renewal application was determined to be administratively complete on June 30, 2022.
18. The complete Permit renewal application was not received by May 4, 2022. Failure to submit the complete Permit renewal application by May 4, 2022, is a violation of Part III, Section D, Condition 10 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
19. On May 19, 2022, DEQ conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.
20. 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 April 1, 2019, through March 31, 2022:
- a. Four (4) violations of pH; and
  - b. Two (2) violations of Fecal Coliform Bacteria.
21. Each of the six (6) discharge limitation violations listed in Paragraph 20 above constitutes a separate permit violation for a total of six (6) separate violations 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 existing Permit until either the effective date of the permit renewal or the effective date of the permit termination.
2. On or before January 31, 2023, Respondent shall submit effluent testing for the following parameters<sup>2</sup>: Ammonia as Nitrogen (NH<sub>3</sub>-N), Total Residual Chlorine (TRC), Dissolved Oxygen (DO), Nitrate-Nitrite, Kjeldahl Nitrogen, Oil and Grease (O&G), Phosphorus, and Total Dissolved Solids (TDS). Three (3) samples taken at winter effluent temperature are required for each parameter.
3. Respondent shall immediately comply with all permitted effluent limits, unless a Corrective Action Plan (CAP) is submitted and approved by DEQ, as provided in Paragraph 4 below, in which case, Respondent shall comply with all permitted effluent limits no later than December 31, 2023.
4. If unable to comply immediately with all permitted effluent limits, within thirty (30) calendar days of the effective date of this Order, Respondent shall submit to DEQ, for review and approval, a comprehensive CAP developed by a Professional Engineer 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 Paragraph 20 and prevent future violations. and the CAP shall include a reasonable milestone schedule with a date of final compliance no later than December 31, 2023. 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.

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<sup>2</sup> Sampling shall be conducted according to sufficiently sensitive test procedures approved under 40 C.F.R. Part 136 for the analysis of pollutants or pollutant parameters.

5. If a CAP is submitted pursuant to Paragraph 4 above, 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. The first quarterly progress report shall be due 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 a final compliance report by December 31, 2023.

6. In compromise and full settlement of the violations specified in the Findings of Fact Respondent agrees to pay a civil penalty of Four Thousand Two Hundred Dollars (\$4200.00), of which Three Thousand Seven Hundred Dollars (\$3700.00) 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 Three Thousand Seven Hundred Dollars (\$3700.00) 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 Four Thousand Two Hundred Dollars (\$4200.00) shall be payable immediately to DEQ. Payment of Five Hundred Dollars (\$500.00) is due within thirty (30) calendar days of the effective date of this Order. Payment of the civil 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.



13. 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.

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

15. 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 3RD NOVEMBER DAY OF OCTOBER, 2022.

  
JULIE LINCK, CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

City of Bearden

BY: Ginger Bailey, Mayor  
(Signature)

Ginger Bailey, Mayor  
(Typed or printed name)

TITLE: Mayor

DATE: 10-25-22

RESOLUTION NO. 2022-02

A RESOLUTION AUTHORIZING THE CITY OF Bearden 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 Bearden :

- 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 Bearden authorizes the Mayor to sign the proposed Consent Administrative Order.*
- 3. The City Council of the City of Bearden 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 25 day of October, 2022

APPROVED: Ginger Bailey  
Mayor

ATTEST: Shelonda Jempstead  
City Clerk