

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT  
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Swifton  
P.O. Box 159  
Swifton, AR 72471

LIS No. ~~22-~~ **23-009**  
Permit No. AR0034860  
AFIN 34-00055

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 Swifton (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 treatment facility (“facility”) located on Jackson County Road 75 in Swifton, Jackson County, Arkansas.
2. Respondent discharges treated wastewater to Cattail Creek, thence to Village Creek, thence to the White River in Segment 4C of the White 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), (4) provide:

(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].

(4) Knowingly to make any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter.

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 AR0034860 (“Permit”) to Respondent on October 28, 2014, with an effective date of November 1, 2014, and an expiration date of October 31, 2019. Respondent’s permit coverage was administratively continued pursuant to APC&EC Rule

6.201 until DEQ issued the renewal Permit on November 17, 2020, with an effective date of December 1, 2020. The renewal Permit expires on November 30, 2025.

### **Inspections and Complaints**

10. On April 3, 2019, April 10, 2019, and May 8, 2019, DEQ conducted a routine Compliance Sampling Inspection of the facility. The inspection revealed the following violations:

- a. DEQ collected samples from Outfall 001 on April 10, 2019. The sample results indicated an ammonia nitrogen concentration of 17.7 mg/L. This value exceeded the permitted effluent limit of 5.2 mg/L. This exceedance of the permitted effluent limit is a violation of Part I, Section A of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
- b. Respondent failed to perform routine calibration checks on the Ultrasonic Flowmeter. Failure to calibrate and maintain the flow measurement device to ensure the accuracy of the measurements is a violation of Part III, Section C, Condition 2 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
- c. Respondent failed to sample the effluent discharge for the monitoring period of April 1–30, 2019. Failure to sample the effluent discharge for the parameters set forth in Part I, Section A of the Permit is a violation of Part I, Section A and Part III, Section C, Condition 1 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

d. Respondent failed to operate and maintain the facility properly as required by Part III, Section B, Condition 1.A of the Permit, and evidenced by the following observations:

- i. Trees and other high vegetation present around the lagoon levee;
- ii. Vegetation growing in the rock filters;
- iii. Excessive algae growth present in the chlorine contact chamber;
- iv. The chlorine bottles were non-operational with injector lines not properly connected; and
- v. The lagoon levee had less than two feet of freeboard.

Failure to operate and maintain the facility properly is a violation of Part III, Section B, Condition 1.A of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

11. On May 8, 2019, DEQ also conducted a Sanitary Sewer Overflow (SSO) and Collection System Inspection of the facility. The inspection revealed the following violations:

- a. The Ada Street and Westside Pump Station hatches were unlocked due to cord placement.
- b. The Ada Street and Westside Pump Stations did not have guards on moving equipment.
- c. Emergency lights at all pump stations were non-operational.

Failure to operate and maintain the Collection System properly is a violation of Part III, Section B, Condition 1.A of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

12. On July 8, 2019, DEQ notified Respondent of the inspection results via letter and requested a written response addressing the violations be submitted to DEQ by July 22, 2019.

DEQ did not receive a written response to the violations documented in the May 8, 2019 inspection by July 22, 2019.

13. On September 10, 2019, DEQ sent a certified letter to Respondent with a copy of the May 8, 2019 inspection report and requested that Respondent submit a written response to the violations to DEQ by September 24, 2019. DEQ did not receive a written response to the violations documented in the May 8, 2019 inspection by September 24, 2019. To date, Respondent has not submitted a written response to the violations documented in the May 8, 2019 inspection report.

14. On December 27, 2021, DEQ received a complaint that raw sewage was being pumped into a ditch and drainage system.

15. On December 27, 2021, DEQ performed a Sanitary Sewer Overflow and Reconnaissance Wastewater Treatment Plant Inspections in response to the complaint. The inspection revealed the following violations:

- a. DEQ observed an unpermitted discharge of untreated sewage from the collection into a ditch. The pumps at the Ada Street Pump Station ceased working due to a recent power outage on December 20, 2021. The operator pumped untreated sewage from the nearby manhole to the ditch and reported the incident as a SSO to DEQ. Respondent is permitted to discharge treated effluent from Outfall 001 in accordance with the effluent limitations, monitoring requirements, and other conditions set forth in the Permit. Respondent is not permitted to discharge untreated sewage from its collection system. Discharge of untreated sewage from the collection system to a ditch is a violation of Part I, Section A of the Permit and

Ark. Code Ann. § 8-4-217(b)(1)(E) and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

- b. DEQ observed woody vegetation around the lagoon levees and in a small area of the rock filter bed. Failure to operate and maintain the facility properly is a violation of Part III, Section B, Condition 1.A of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

16. On January 3, 2022, DEQ received a complaint that Respondent was pumping raw sewage into a ditch that flows into Village Creek.

17. On March 7, 2022, DEQ held a meeting with Respondent via ZOOM to discuss the recent complaints and unpermitted discharges.

18. On March 31, 2022, DEQ notified Respondent of the December 27, 2021 inspection results and requested that Respondent submit a written response to DEQ by April 18, 2022. DEQ did not receive the written response to the violations by April 18, 2022.

#### **DMRs and SSOs**

19. On April 7, 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 January 1, 2019, through January 31, 2022:

- a. Nine (9) violations of Total Suspended Solids;
- b. Four (4) violations of Carbonaceous Biochemical Oxygen Demand;
- c. Three (3) violations of Ammonia Nitrogen;
- d. One (1) violation of Fecal Coliform Bacteria;

- e. One (1) violation of Dissolved Oxygen; and
- f. One (1) violation of Total Residual Chlorine.

21. Each of the nineteen (19) discharge limitation violations listed in Paragraph 20 above constitutes a separate permit violation for a total of nineteen (19) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

22. The review of the DMRs also revealed that Respondent failed to conduct analyses for the monitoring periods ending April 30, 2019, and December 31, 2021. Failure to monitor the effluent in accordance with the requirements set forth in the Permit is a violation of Part I, Section A of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

23. The review of the DMRs further revealed that Respondent reported No Discharge on the DMR for the monitoring period ending May 31, 2019. DEQ, during its inspection of the facility on May 8, 2019, documented a discharge from the facility. Respondent was present for the inspection, and Respondent received an inspection report in which the discharge from Respondent's facility was documented. Knowingly making a false certification to DEQ in a report required to be filed pursuant to the Permit is a violation of Ark. Code Ann. § 8-4-217(a)(4).

24. The review of the DMRs further revealed that Respondent reported the following DMRs after the due date of the respective DMR. Failure to submit the DMR by the 25th day of the month following the reporting period is a violation of Part III, Section C, Condition 5 of the Permit.

- a. 2019: February, April, May, June, and July;
- b. 2020: April and October; and
- c. 2021: December.

25. Each of the eight (8) violations listed in Paragraph 24 above constitutes a separate permit violation for a total of eight (8) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

26. On March 29, 2022, DEQ conducted a review of the SSOs reported by Respondent in accordance with the Permit for the period of January 1, 2019, through February 28, 2022.

27. The review revealed that Respondent reported four (4) SSOs totaling approximately 35,000 gallons. Respondent is permitted to discharge treated effluent from Outfall 001 in accordance with the effluent limitations, monitoring requirements, and other conditions set forth in the Permit. Respondent is not permitted to discharge untreated sewage from its collection system. Each of the four (4) unpermitted discharges of untreated sewage from the collection system to a ditch is a separate violation of Part I, Section A of the Permit and Ark. Code Ann. § 8-4-217(b)(1)(E) for a total of four (4) 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 cease all unpermitted discharges of untreated wastewater from its collection system.
2. Respondent shall sample the effluent in accordance with Part I, Section A of the Permit and report the results on the corresponding DMR.
3. Respondent shall submit DMRs in accordance with Part III, Section C, Condition 5 of the Permit.
4. Within thirty (30) calendar days of the effective date of this Order, Respondent shall submit to DEQ, for review and approval, a comprehensive Corrective Action Plan (CAP) developed by a Professional Engineer (P.E.) licensed in the state of Arkansas. The CAP shall



include, at a 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. The CAP shall include a reasonable milestone schedule with a date of final compliance no later than December 31, 2024. Upon review and approval by DEQ, Respondent shall comply with the terms, milestone schedule, and final compliance date in the approved CAP. The milestone schedule and final compliance date shall be fully enforceable as terms of this Order.

5. 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 compliance date in the approved CAP.

6. On or before the effective date of the Order, Respondent shall correct the DMR for the monitoring period ending May 31, 2019, to reflect "NODI E = Analysis Not Conducted." Respondent shall sample the effluent in accordance with Part I, Section A of the Permit and report the results on the corresponding DMR.

7. 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 prevent SSOs. Respondent shall implement the interim operating plan immediately upon its submittal to DEQ.

8. Within thirty (30) calendar days of the effective date of this Order, Respondent shall submit an adequate response to the inspections performed on May 8, 2019, and December 27, 2021. The responses shall include the corrective actions taken to address the violations and photographic documentation.

9. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Nine Thousand Two Hundred Dollars (\$9200.00), of which Seven Thousand Two Hundred Dollars (\$7200.00) 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 Seven Thousand Two Hundred Dollars (\$7200.00) 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 Nine Thousand Two Hundred Dollars (\$9200.00) shall be payable immediately to DEQ. Payment of the unsuspended 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

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

17. 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 19th DAY OF January, ~~2022~~ <sup>2023</sup>.

Bailey Tappin  
~~JULIE LINCK, CHIEF ADMINISTRATOR, ENVIRONMENT~~  
Associate environment Administrator

APPROVED AS TO FORM AND CONTENT:

City of Swifton

BY: [Signature]  
(Signature)

Craig Crider  
(Typed or printed name)

TITLE: Mayor

DATE: 12-15-2022

November 08, 2022  
Swifton City Council  
Regular Session  
6:04pm

The Swifton City Council met with the following members present: Noel Adams, Maston Kinder, Rodney Gilmore and Anneata Drost. Also, in attendance was Clerk Tabitha Johnson and Mayor Craig Crider, Fire Chief Rusty Kinder, and Patrol Jessica Foust and Brian Drost.

After reviewing the agenda, a motion made by Gilmore and 2<sup>nd</sup> by Drost to accept the agenda was passed unanimously.

After reading the minute, a motion to accept them as read was made by Kinder and 2<sup>nd</sup> by Adams passed unanimously.

After reviewing the financials, Adams made a motion to accept them as is and Drost 2<sup>nd</sup>, passed unanimously.

Mayor presented Ordinance 22-09 Curfew RV Ordinance, Adams made a motion to accept it, Drost 2<sup>nd</sup>, passed unanimously.

Discussion on year end pay...Adams made a motion to give all employees who have been here all year 2 weeks pay, the rest of the full time employees are pro-rated and parttime employees are \$150.00. Drost 2<sup>nd</sup> passed unanimously.

Discussion on letter received from ADEQ. Gilmore made a motion for Mayor to sign the agreement and pay the penalty. Drost 2<sup>nd</sup>. Passed unanimously.

Discussed the June 30, 2022 audit report. There were no findings.


Mayor informed the council he was going to contact Wayne at Miller Newell about the bills on the valve installation.

Rusty informed the council that the brush truck was in, and the grant for the sewer project was submitted for approx. 499,000, and the park equipment shipped on the 28<sup>th</sup>.

Discussion on the parade. Lineup at the grain bins at 4 Parade at 4:30. December 10<sup>th</sup>. Christmas Dinner will also be Dec 10<sup>th</sup> at 11:00.

Adams made a motion to adjourn at 6:27pm. Gilmore 2<sup>nd</sup>, passed unanimously.

  
Tabitha Johnson  
Recorder/Treasurer

  
Craig Crider  
Mayor

Noel Adams

Maston Kinder

JH

Anneata Drost

Rodney Gilmore