

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Hardy
P.O. Box 5
Hardy, AR 72542

LIS No. 23-015
Permit Number: AR0037991
AFIN 68-00018

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 Hardy (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 at Burton Street, Hardy, Sharp County, Arkansas.
2. Respondent discharges treated wastewater to Spring River, thence to Black River, thence to White River in Segment 4H 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) 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 AR0037991 (“Permit”) to Respondent on November 22, 2017. The Permit became effective on January 1, 2018, and expires on December 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, December 31, 2022.

12. On January 4, 2022, and April 1, 2022, Respondent was notified that the Permit would expire on December 31, 2022, and that in order to continue the regulated activity, a complete renewal application must be submitted no later than July 4, 2022.

13. DEQ received a Permit renewal application from Respondent on May 18, 2022, and on May 24, 2022, DEQ notified Respondent that the submitted renewal application was incomplete. The incomplete Permit application submitted on May 18, 2022, was missing the following information:

a. DEQ Form 1

- (1) The legal name in Section A.1 must be the name of the entity holding the permit, i.e., the City of Hardy.
- (2) Section A.10 requires submittal of a location map.
- (3) Section B.1 requires submittal of a topographic map. This map must show at least one mile around the property boundary of the facility. The outfall location must also be marked on this map.
- (4) Section B.2 must include the following:
 - (a) Type of wastewater treatment plant;
 - (b) How the effluent samples are collected;
 - (c) A narrative description of the outfall location;
 - (d) A process flow diagram of the wastewater treatment plant; and
 - (e) How flow is measured.
- (5) Section B.3 must be completed.

b. EPA Form 2A must be completed.

14. DEQ received a revised Permit renewal application from Respondent on June 9, 2022, and on June 24, 2022, DEQ notified Respondent that the revised renewal application was incomplete . The incomplete Permit application submitted on June 9, 2022, was missing the following information:

a. EPA Form 2A.

15. On August 10 2022, DEQ received a second revised Permit renewal application from Respondent, and on August 11, 2022, DEQ notified Respondent that the application was incomplete The incomplete application submitted on August 10, 2022, was missing the following information:

a. DEQ Form 1

- (1) Section A.9 should be marked “no” since municipalities are exempt from the Disclosure Statement requirement.
- (2) Section B.2 Section B.3 must be marked “yes” as municipalities are considered to be POTWs. Influent data for CBOD5 and TSS must be submitted. If this information is not available at this time, the application should note that the information will be obtained as soon as possible.
- (3) Section B.6 was not fully completed. The question regarding submittal of a FEMA map with a previous application must be answered.
- (4) The Cognizant Official, Mr. Steven Morris, must sign Section H.3.
- (5) The Responsible Official must sign section H.4.

b. EPA Form 2A

- (1) Actual flows must be listed in Section 1.10.
- (2) Section 2.2 must be completed.

- (3) The outfall location must be marked on the topographic map as required by Section 2.3.
- (4) Section 3.6 must be marked “yes” as the facility will discharge to a Waters of the United States.
- (5) Sections 3.7, 3.9 – 3.26, 4, and 5 must be completed.
- (6) The Responsible Official must sign the application.

16. On August 25, 2022, Respondent submitted an updated Permit renewal application, and on September 14, 2022, DEQ notified Respondent that the Permit renewal application was determined to be administratively complete on August 25, 2022.

17. The complete Permit renewal application was not received by July 4, 2022. Failure to submit the complete Permit renewal application by July 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).

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. Within thirty (30) calendar days of the effective date of this Order, Respondent shall submit effluent testing results for winter effluent temperature and summer effluent temperature, as required by EPA Form 2A.
3. Within thirty (30) calendar days of the effective date of this Order, Respondent shall submit results for three influent tests for Biochemical Oxygen Demand and Total Suspended Solids, as required by DEQ Form 1.
4. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of One Thousand Dollars (\$1000.00), or one-half of the

full civil penalty of Five Hundred Dollars (\$500.00) if this Order is signed and returned to the Office of Water Quality Enforcement Branch, DEQ, 5301 Northshore Drive, North Little Rock, Arkansas, 72118-5317, within twenty (20) calendar days of receipt of this Order. Payment 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:

Division of Environmental Quality
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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

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

13. 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 6th DAY OF February, 2023.



CALEB J. OSBORNE, DIVISION OF ENVIRONMENTAL QUALITY, DIRECTOR
CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

City of Hardy

BY:



(Signature)

Ethan J. Barnes / DARLENE WILSON
(Typed or printed name)

TITLE:

Mayor / RECORDER-TREASURER

DATE:

01/20/2023

RESOLUTION 2023-4

**A RESOLUTION TO APPROVE THE CONSENT ADMINISTRATIVE ORDER AND
AUTHORIZE THE MAYOR AND RECORDER-TREASURER
TO SIGN CAO AMENDMENT ON BEHALF OF CITY OF HARDY BURTON STREET
WASTEWATER TREATMENT FACILITY**

WHEREAS, the City of Hardy Arkansas operates a municipal wastewater treatment facility located at Burton Street, Hardy, Sharp County, Arkansas; and

WHEREAS, the City of Hardy discharges treated wastewater to Spring River thence to Black River thence to White River in Segment 4H of the White River Basin; and

WHEREAS, the City of Hardy holds NPDES Permit Number AR0037991 issued on November 22, 2017, which was effective January 1, 2018, and expired December 31, 2022; and

WHEREAS, the City of Hardy continued operation of this Facility beyond the expiration date of the current permit, December 31, 2022;

WHEREAS, the complete permit renewal application was not received by July 4, 2022 which 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); and


WHEREAS, on August 25, 2022, the DEQ received a completed renewal application and notified the City of Hardy on September 14, 2022.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HARDY, ARKANSAS THAT:

SECTION 1. The Consent Administrative Order (CAO) issued pursuant to the authority of the Arkansas Water and Air Pollution Control Act has been reviewed and approved by the City Council.

SECTION 2. The Mayor and City Recorder-Treasurer are authorized to sign the Consent Administrative Order (CAO) on behalf of the City of Hardy.

PASSED AND APPROVED THIS 17th **DAY OF** January, 2023.



Ethan J. Barnes, Mayor



Darlene Wilson, Recorder-Treasurer

Filed 1-18-23 DW
City of Hardy, Arkansas
Recorder-Treasurer Office