

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT  
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

National Park Service  
Tyler Bend Wastewater Facility  
402 North Walnut  
Harrison, AR 72601

LIS No. ~~23~~-24-006  
Permit Number: 3816-WR-1  
AFIN 65-00033

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 the National Park Service by and through its Buffalo National River Superintendent, Jesse Morris (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 the Tyler Bend Wastewater Facility, a storage and land application facility, ("Facility") located at 300 White Water Road, Saint Joe, Searcy County, Arkansas.
2. Respondent is regulated pursuant to the Arkansas Water and Air Pollution Control Act ("Act"), Ark. Code Ann. § 8-4-101 *et seq.*
3. DEQ is authorized under the Act to issue permits in the state of Arkansas for the operation of disposal systems or any part of them and to initiate an enforcement action for any violation of a permit issued pursuant to the Act.

4. 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&BC] under this chapter or of a permit issued under this chapter by the [DEQ].

5. 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.

6. 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."

7. DEQ issued No-Discharge Permit Number 3816-WR-1 ("Permit") to Respondent on September 6, 2018. The Permit became effective on October 1, 2018, and expires on September 30, 2023.

#### Permit Renewal Application

8. Part III, Condition 23 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.

9. Respondent intends to operate this facility beyond the expiration date of the current permit, September 30, 2023.

10. On October 4, 2022 and January 17, 2023, Respondent was notified that the Permit would expire on September 30, 2023, and that in order to continue the regulated activity, a complete renewal application must be submitted no later than April 3, 2023.

11. DEQ received a Permit renewal application from Respondent on April 5, 2023, and notified Respondent that its application was incomplete on April 19, 2023. The incomplete application submitted on April 5, 2023, was missing the following information:

- a. Submitted nutrient management plan (NMP) did not contain a completed signature page. NMP must be signed by the Nutrient Management Planner and the permittee.

12. Respondent submitted additional information to the permit renewal application on April 26, 2023. On May 8, 2023, DEQ notified Respondent that its application was determined to be administratively complete on April 26, 2023.

13. The complete Permit renewal application was not received by April 3, 2023. Failure to submit the complete Permit renewal application by April 3, 2023, is a violation of Part III, Condition 23 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

#### Past Due Permit Fees

14. DEQ is authorized by Ark. Code Ann. § 8-1-103 to charge fees for issuance, modification, and annual review of permits. APC&EC Rule 9.301(D) provides:

A permitted facility failing or refusing to pay the annual fee in a timely manner shall be subject to a late payment charge as established in these regulations. Continued refusal to pay the required fees after a reasonable notice shall constitute grounds for legal action by the Division, which may result in revocation of the permit.

15. On January 12, 2023, DEQ issued invoice number PDS-198056 for annual fees for No-Discharge Permit Number 3816-WR-1 with the amount due of Five Hundred Dollars (\$500.00). Payment was due by February 26, 2023. Respondent failed to make payment in a timely manner, and late charges of Fifty Dollars (\$50.00) accrued.

16. On October 19, 2023, Respondent submitted payment in the amount of Five Hundred Fifty Dollars (\$550.00). Failure to submit timely payment of invoice number PDS-198056 is in violation

of Part III, Condition 9 of the Permit and APC&EC Rule 9.301(D) 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. 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.

3. 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.
4. 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 DEQ promptly, as provided in the preceding paragraph of this Section, shall be grounds for a denial of an extension.

5. 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.

6. 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 be effective upon the Director and Chief Administrator of the Environment's signature. 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.

7. 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.

8. 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 29 DAY OF JANUARY <sup>CFJ</sup>  
~~2024~~  
~~2023~~



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

APPROVED AS TO FORM AND CONTENT:

National Park Service

BY:   
(Signature)

Angela D. Boyers  
(Typed or printed name)

TITLE: Superintendent

DATE: DEC 18 2023