

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Lincoln County
Lincoln County Detention Center
300 South Drew St., Room 100
Star City, AR 71667

24-
LIS No. 23- 011
Permit No. AR0053112
AFIN 40-00318

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 Lincoln County – Lincoln County Detention Center (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 minor industrial wastewater treatment facility (“facility”) located at 30298 Highway 11, Star City, Lincoln County, Arkansas.
2. Respondent discharges treated wastewater to an unnamed tributary of Sanders Creek, thence to Sanders Creek, thence to Hudgens Creek, thence to the Saline River, thence to the Ouachita River in Segment 2C of the Ouachita 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 a 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 rules, permits, or plans 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 AR0053112 (“Permit”) to Respondent on July 20, 2020. The Permit became effective on September 1, 2020, and expires on August 31, 2025.
10. On, July 6, 2023, DEQ conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.

11. 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 September 30, 2020, through November 30, 2023:

- a. Thirteen (13) violations of Ammonia Nitrogen; and
- b. Four (7) violations of Carbonaceous Biochemical Oxygen Demand.

12. Each of the seventeen (20) discharge limitation violations listed in Paragraph 11 above constitutes a separate permit violation for a total of seventeen (20) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

13. The review of the DMRs also revealed that Respondent failed to submit Non-Compliance Reports (NCRs) for effluent violations reported during the following three (3) monitoring periods:

- a. 2022: March, April, July.

Failure to submit a NCR for each effluent violation 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).

14. The review of the DMRs further revealed that Respondent failed to submit DMRs by the due date for the following eight (8) monitoring periods:

- a. 2020: September, October, November, December;
- b. 2021: January, February;
- c. 2022: June, July; and
- d. 2023: June.

Failure to submit DMRs with the monitoring results obtained during the monitoring period no later than the 25th of the month following the completed monitoring period is a violation of Part III, Section C, Condition 5 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 immediately comply with all permitted effluent limits, unless a Corrective Action Plan (CAP) is submitted, as provided in Paragraph 2 of this Order, and approved by DEQ, in which case, Respondent shall comply with all permitted effluent limits no later than December 31, 2025.
2. If unable to comply with all permitted effluent limits immediately, Respondent shall, within thirty (30) calendar days of the effective date of this Order, 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 11, prevent future violations, and include a reasonable milestone schedule with a date of final compliance no later than December 31, 2025. Upon review and approval by DEQ, Respondent shall implement the CAP and shall comply with the terms, milestone schedule, and final compliance date contained in the approved CAP, or by December 31, 2025, whichever occurs first. 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 a final compliance report that includes a certification of compliance within thirty (30) calendar days of the final compliance date in the approved CAP or by December 31, 2025, whichever occurs first.

4. On or before the effective date of this Order, Respondent shall submit to DEQ complete NCRs detailing each effluent limit violation and the actions taken to address the effluent limit violations listed in Paragraph 11 of the Findings of Fact. A separate NCR must be submitted for each monitoring period listed in Paragraph 13 of the Findings of Fact. Respondent shall submit the NCRs to the Enforcement Branch of the DEQ Office of Water Quality via email at water-enforcement-report@adeq.state.ar.us.

5. Respondent shall submit NCRs in accordance with Part III, Section D, Condition 7 of the Permit.

6. Respondent shall submit DMRs in accordance with Part III, Section C, Condition 5 of the Permit.

7. 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 Fifty Dollars (\$4250.00), of which Three Thousand Two Hundred Fifty Dollars (\$3250.00) 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 efforts towards achieving permit compliance. If Respondent fully complies with this Order, the suspended civil penalty of Three Thousand Two Hundred Fifty Dollars (\$3250.00) 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 Fifty Dollars (\$4250.00) shall be payable immediately to DEQ. Payment of the civil penalty in the amount of One Thousand Dollars (\$1000.00) 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.

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. 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 ~~8~~ ^{9th} DAY OF January, 202~~3~~⁴



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

APPROVED AS TO FORM AND CONTENT:

Lincoln County - Lincoln County Detention Center

BY:  _____
(Signature)

Buddy Lynn Earnest _____
(Typed or printed name)

TITLE: County Judge _____

DATE: 01-08-24 _____