

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Dumas
155 E. Waterman
Dumas, AR, 71639

LIS No. 24- 012
Permit Number: AR0033987
AFIN 21-00045

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 Dumas (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 204 Ford Loop Road, Desha County, Arkansas.
2. Respondent discharges treated wastewater to Canal #19, thence into Bayou Macon in Segment 2A 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 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 AR0033987 (“Permit”) to Respondent on February 9, 2017. The Permit became effective on February 1, 2017, was modified on March 1, 2017, and expired on January 31, 2022.

Permit Renewal

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 has operated this facility beyond the expiration date of the current permit, January 31, 2022.
12. On February 10, 2021, and May 3, 2021, Respondent was notified that the Permit would expire on January 31, 2022, and that in order to continue the regulated activity, a complete renewal application must be submitted no later than August 4, 2021.
13. DEQ received a permit renewal application from Respondent on August 2, 2021. On August 3, 2021, DEQ notified Respondent that its application was incomplete and listed the information needed to complete the application.
14. Respondent submitted an updated permit application for renewal on August 5, 2021. On August 25, 2021, DEQ notified Respondent that its application was determined to be administratively complete on August 5, 2021.
15. The complete Permit renewal application was not received by August 4, 2021. Failure to submit the complete Permit renewal application by August 4, 2021, 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).
16. On September 19, 2023, DEQ issued a renewal of Permit Number AR0033987 with an effective date of October 1, 2023, and an expiration date of September 30, 2028.

DMR Violations

17. On December 19, 2022, DEQ sent Respondent a request for a Corrective Action Plan (CAP) due to violations of the permitted effluent discharge limitations. The CAP was to have a

milestone schedule, a final date of compliance, and be certified by a Professional Engineer (P.E.) licensed in the state of Arkansas.

18. On February 7, 2023, Respondent submitted a CAP to DEQ that had a final compliance date of December 31, 2023.

19. On May 1, 2023, DEQ sent Respondent a CAP response letter stating that the CAP submitted on February 7, 2023, was deemed adequate.

20. On August 15, 2023, DEQ conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.

21. 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 July 1, 2020, through June 30, 2023:

- a. Thirteen (13) violations of Total Residual Chlorine;
- b. One (1) violations of pH; and
- c. One (1) violation of Fecal Coliform Bacteria.

22. Each of the 15 discharge limitation violations listed in Paragraph 21 above constitutes a separate permit violation for a total of 15 separate violations of Ark. Code Ann. § 8-4-217(a)(3).

23. The review of the DMRs further revealed that Respondent failed to submit DMRs by the due date for the following twenty-two (22) monitoring periods:

- a. 2020: August, September, November, December;
- b. 2021: January, March, June, July, August, September, November, December;
- c. 2022: January, March, June, July, August, December; and
- d. 2023: January, March, May, 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. Within thirty (30) calendar days of the effective date of this order, Respondent shall submit to DEQ a statement certifying that they are on schedule with the milestone schedule contained in the approved CAP submitted on February 7, 2023, OR Respondent shall submit a revised milestone schedule with a final compliance date of no later than December 31, 2025. If a revised milestone schedule is submitted, it will be fully enforceable as terms of this Order.
2. 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.
3. Respondent shall submit all DMRs in accordance with Part III, Section C, Condition 5 of the Permit.
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 Seven Hundred Fifty Dollars (\$1750.00). 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:

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.

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.

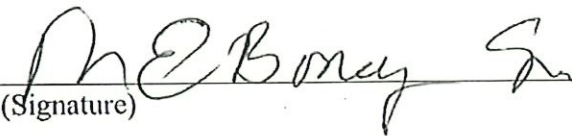
13. The City Council of Respondent has authorized the Mayor and City Clerk/Treasurer to expend funds for compliance activities required by this Order including but not limited to the payment of a civil penalty as set forth in this Order. See Exhibit A.

SO ORDERED THIS 12TH DAY OF JANUARY, 2024.


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

APPROVED AS TO FORM AND CONTENT:

City of Dumas

BY:  Norma Esaw
(Signature) Price E. Boney Sr. City Clerk/Treasurer
(Typed or printed name)

TITLE: Mayor

DATE: 1-9-24

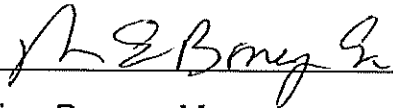
RESOLUTION 1561

RESOLUTION TO AUTHORIZE MAYOR AND CLERK TO SIGN AND
PAY THE CIVIL PENALTY FOR THE NPDES PERMIT CIVIL PENALTY
IN THE AMOUNT OF \$1,750.00 FOR THE PROPOSED CONSENT
ADMINISTRATIVE ORDER

WHEREAS, the NPDES permit number is AR0033987, AFIN 21-00045

Resolution approved this 8th day of January, 2024.

APPROVED:



Price Boney, Mayor

ATTEST:



Norma Esaw, Clerk/Treasurer