

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Runyan Sewer Improvement District No. 221
70 Sheila Drive
Sherwood, AR 72120

LIS No. 24- 019
Permit No. AR0038075
AFIN 60-00597

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 Runyan Sewer Improvement District No. 221 (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 sewer improvement district (“facility”) located at 70 Sheila Drive, Sherwood, Pulaski County, Arkansas.
2. Respondent discharges treated wastewater to an unnamed tributary, thence to Kellogg Creek, thence to Bayou Meto, and thence to the Arkansas River in Segment 3B of the Arkansas 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 AR0038075 (“Permit”) to Respondent on August 15, 2019. The Permit became effective on September 1, 2019, and expires on August 31, 2024.

10. On April 27, 2023, DEQ conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.

11. The review revealed the following violations of the permitted effluent discharge limits detailed in Part I, Section A of the Permit from April 1, 2020 through March 31, 2023:

a. Sixty-three (63) violations of Fecal Coliform Bacteria;

- b. Twenty-six (26) violations of Dissolved Oxygen;
- c. Seventeen (17) violations of Total Suspended Solids;
- d. Fifteen (15) violations of pH; and
- e. Seven (7) violations of Ammonia Nitrogen.

12. Each of the 128 discharge limitation violations listed in Paragraph 11 above constitutes a separate permit violation for a total of 128 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 each of the effluent violations listed above. 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. On May 4, 2023, DEQ and Respondent met to discuss the violations of the permitted effluent discharge limitations and the corrective actions needed to address the violations.

15. On October 17, 2023, DEQ conducted a follow-up review of the certified DMRs submitted by Respondent in accordance with the Permit.

16. The review revealed the following violations of the permitted effluent discharge limits detailed in Part I, Section A of the Permit from April 1, 2023, through August 31, 2023:

- a. Eight (8) violations of Fecal Coliform Bacteria;
- b. Six (6) violations of Total Suspended Solids;
- c. Two (2) violations of Dissolved Oxygen; and
- d. One (1) violation of pH.

17. Each of the 17 discharge limitation violations listed in Paragraph 16 above constitutes a separate permit violation for a total of 17 separate violations of Ark. Code Ann. § 8-4-217(a)(3).

18. The review of the DMRs also revealed that Respondent had still not submitted any NCRs for the violations reported, despite DEQ requesting them during the May 4, 2023 meeting.

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, for review and approval, a comprehensive Corrective Action Plan (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 and prevent future violations. The CAP shall also identify a system that will be implemented to ensure that Respondent meets all reporting requirements set forth in the Permit. The CAP shall further include a reasonable milestone schedule with a date of final compliance no later than December 31, 2026. Upon review and approval by DEQ, Respondent shall comply with the terms, milestone schedule, and final compliance date contained in the approved CAP. The milestone schedule and final compliance date shall 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 signed and stamped by a Professional Engineer licensed in the state of Arkansas, within thirty (30) calendar days of the final compliance date in the approved CAP or by December 31, 2026, whichever occurs first.
3. 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 that occurred between June 1, 2020, and May 31, 2023. A separate NCR must be submitted for each monitoring period that a violation of the effluent discharge limitations was reported. 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.

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

5. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Eight Thousand Three Hundred Fifty Dollars (\$8350.00), or one-half of the full civil penalty of Four Thousand One Hundred Seventy-five Dollars (\$4175.00) 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:

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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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) calendar days 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.

11. 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.

12. The undersigned representative of the Respondent certifies that he or she is a Commissioner of the Respondent and thus authorized to execute this Order and to legally bind the Respondent to its terms and conditions. Execution of this Order by an individual other than a Commissioner of Respondent shall be accompanied by a resolution granting signature authority to said individual as duly ratified by the governing body of the entity.

SO ORDERED THIS 30th DAY OF JANUARY, 2024.



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

APPROVED AS TO FORM AND CONTENT:

Runyan Sewer Improvement District No. 221

BY:  _____
(Signature)

Bob Tobey _____
(Typed or printed name)

TITLE: Comm. Chairman _____

DATE: 1/20/2024 _____