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MAIL ROOM

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Greenbrier
P.O. Box 415
Greenbrier, AR 72058

LIS No. 24- 071
Permit No. AR0036536
AFIN: 23-00071

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 City of Greenbrier (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 municipal wastewater treatment plant (“facility”) located at 40 Amber Road, Greenbrier, Faulkner County, Arkansas.
2. Respondent discharges treated wastewater to Greenbrier Creek, thence to Cadron Creek, and thence to the Arkansas River in Segment 3D 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 AR0036536 (“Permit”) to Respondent on September 10, 2018. The Permit became effective on October 1, 2018. DEQ issued a corrected Permit on November 19, 2018. The Permit had an effective date of December 1, 2018, and expired on September 30, 2023. Respondent submitted an administratively complete permit application in accordance with Part III, Section D, Condition 10, and therefore, the Permit is administratively continued pursuant to APC&EC Rule 6.201 until DEQ issues the renewal Permit.

10. On August 23, 2022, Respondent reported to DEQ that a sewage pipe in their collection system had ruptured and was causing an unpermitted discharge. Respondent submitted photographs of the ruptured pipe and pictures of the pipe showing it was repaired and that the unpermitted discharge had stopped. Respondent is permitted to discharge treated municipal wastewater from its permitted outfall. Respondent is not permitted to discharge untreated wastewater from its collection system. The release of untreated sewage from the collection system constituted an unpermitted discharge in violation of Part I, Section A of the Permit and Ark. Code Ann. § 8-4-217(b)(1)(E) and therefore in violation of Ark. Code Ann. § 8-4-217(a)(3).

11. On September 12, 2022, DEQ received notice from the Arkansas Department of Emergency Management that the Faulkner County Local Coordinator (FCLC) reported a release of raw sewage impacting a residential pond and Greenbrier Creek. The cause of the release was a ruptured sewer pipe and repairs had been made to the sewer pipe. The report further stated that the release occurred during the previous month and the Respondent fixed the pipe soon after.

12. On September 28, 2022, Respondent sent DEQ a notification with photographs of the permanent fix to the sewage pipe that ruptured and caused the unpermitted discharge.

13. On September 29, 2022, DEQ and Respondent met to discuss the unpermitted discharge, various compliance issues, and future corrective actions. During the meeting, Respondent stated that some components of the treatment system were not operational at the time.

14. On October 28, 2022, Respondent submitted a Corrective Action Plan (CAP) to DEQ to address improvements to the collection system and the wastewater treatment plant. The CAP had a date of August 31, 2023, for finalizing a master plan for all the corrective actions necessary.

15. On November 15, 2022, DEQ sent Respondent a letter approving the CAP submitted on October 28, 2022.

16. On January 5, 2024, DEQ conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.

17. 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 December 1, 2020, through November 30, 2023:

- a. Thirty-two (32) violations of pH;
- b. Four (4) violations of Fecal Coliform Bacteria; and
- c. One (1) violation of Dissolved Oxygen.

18. Each of the thirty-seven (37) discharge limitation violations listed in Paragraph 17 above constitutes a separate permit violation for a total of thirty-seven (37) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Beginning on the effective date of this Order, and lasting for a period of one year, Respondent shall conduct quarterly inspections of the pipe segment that ruptured on August 23, 2022, and adjacent pipe segments. Respondent shall document the following information:

- a. Any signs of further erosion;
- b. Any discharge coming from the pipe;
- c. Any corrective actions that were or will be taken;
- d. The person who performed the inspection.

The inspection records shall be kept on file for three (3) years and submitted to DEQ upon request. If any deficiencies are documented during the quarterly inspections, Respondent shall report those to DEQ within twenty-four (24) hours of conducting the inspection.

2. Within thirty (30) calendar days of the effective date of this Order, Respondent shall submit an updated milestone schedule with a final compliance date to DEQ. The milestone schedule shall contain the master plan for all the necessary corrective actions, the date that each corrective action shall be completed, and a final compliance date. The revised 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 and revised milestone schedule.

4. Within thirty (30) calendar days of the effective date of this Order, Respondent shall develop and submit to DEQ, for review and approval, a Sanitary Sewer Overflow Response Plan that identifies measures to protect public health and the environment including, but not limited to, the following:

a. A standard operating plan (SOP) setting forth the response procedures for overflows with protocols for the immediate dispatch of appropriate personnel to investigate and remediate the overflow; and

b. A SOP detailing the required reporting of overflows in accordance with Respondent's Permit.

5. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Four Thousand Six Hundred Dollars (\$4600.00), or one-half of the full civil penalty of Two Thousand Three Hundred Dollars (\$2300.00) 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 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) 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.

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. 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.

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

14. 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 15th DAY OF April, 2024.



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

APPROVED AS TO FORM AND CONTENT:

City of Greenbrier

BY: 
(Signature)

SAMMY HARTWICK
(Typed or printed name)

TITLE: MAYOR

DATE: MARCH 04, 2024

IN THE CITY OF GREENBRIER, ARKANSAS

RESOLUTION 2024- 01

**RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF A
CONSENT ADMINISTRATIVE ORDER WITH THE ARKANSAS DIVISION OF
ENVIRONMENTAL QUALITY WITH REFERENCE TO THE GREENBRIER
WASTEWATER TREATMENT FACILITY AT 40 AMBER ROAD**

BE IT RESOLVED BY THE CITY COUNCIL OF GREENBRIER, ARKANSAS, THAT:

WHEREAS, the City of Greenbrier owns and operates a wastewater treatment facility at 40 Amber Road, in Greenbrier, Arkansas, for treatment of sanitary sewer and wastewater; and

WHEREAS, the Wastewater Treatment Facility operates under the State of Arkansas issued National Pollutant Discharge Elimination System (NPDES) Permit AR 0036536, and

WHEREAS, the City of Greenbrier, Arkansas is committed to compliance with the Clean Water Act and its NPDES permit requirements; and

WHEREAS, the City of Greenbrier, Arkansas has submitted to the Arkansas Division of Environmental Quality (ADEQ) a voluntary Corrective Action Plan (CAP) resulting in a proposed Consent Administrative Order (CAO) with suspended penalty to address operational issues related to the permit.

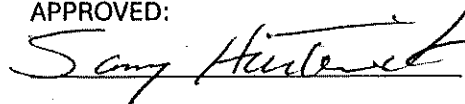
NOW THEREFORE:

SECTION 1: The attached precedent for a Consent Administrative Order with the Arkansas Division of Environmental Quality (ADEQ) is hereby approved by the City of Greenbrier, and the Mayor, his signature being attested by the City Clerk, is hereby authorized to execute the Consent Administrative Order (CAO).

SECTION 2: The Mayor and his designated agents, are hereby authorized to execute actions required of the City of Greenbrier by the CAO, including payment of civil penalties set forth in the Order.

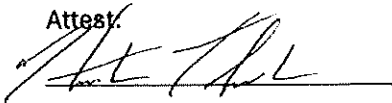
This Resolution adopted this 4th day of March, 2024.

APPROVED:



Mayor

Attest:



City Clerk

Approved as to Form:

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