

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Van Buren Municipal Utilities
City of Van Buren South Plant
P.O. Drawer 1269
Van Buren, AR 72956

LIS No. 25- 007
Permit No. AR0021482
AFIN 17-00062

City of Van Buren Municipal Utilities
City of Van Buren North Plant
P.O. Drawer 1269
Van Buren, AR 72956

Permit No. AR0040967
AFIN 17-00565

City of Van Buren Municipal Utilities
Lee Creek Industrial Park Plant
P.O. Drawer 1269
Van Buren, AR 72956

Permit No. AR0037567
AFIN 17-00057

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 Van Buren Municipal Utilities (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 three municipal wastewater treatment facilities:
 - a. The South Plant facility (South Plant) is located at 1404 Port Road, Van Buren, Crawford County, Arkansas.

- b. The North Plant facility (North Plant) is located at 1945 Wellnitz Drive, Van Buren, Crawford County, Arkansas.
 - c. The Lee Creek Industrial Park Plant facility (Lee Creek Plant) is located at 1200 Lee Creek Road, Van Buren, Crawford County, Arkansas.
- 2. Respondent's South Plant and Lee Creek Plant discharge treated wastewater to the Arkansas River in Segment 3H of the Arkansas River Basin.
 - 3. Respondent's North Plant discharges treated wastewater to Lee Creek, thence to Arkansas River in Segment 3H of the Arkansas River Basin.
 - 4. Respondent is regulated pursuant to the National Pollutant Discharge Elimination System (NPDES).
 - 5. 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).
 - 6. 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.
 - 7. 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].

8. 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.

9. 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.”

10. DEQ issued NPDES Permit Number AR0021482 to Respondent’s South Plant on November 17, 2020. The Permit became effective on December 1, 2020, and expires on November 30, 2025.

11. DEQ issued NPDES Permit Number AR0040967 to the Respondent’s North Plant on September 24, 2018. The Permit became effective on October 1, 2018, and expired on September 30, 2023. The Permit was administratively continued pursuant to APC&EC Rule 6.201 on April 3, 2023, until DEQ issues the renewal Permit.

12. DEQ issued NPDES Permit Number AR0037567 to Respondent’s Lee Creek Plant on August 27, 2018. The Permit became effective on October 1, 2018, and expired on September 30, 2023. The Permit was administratively continued pursuant to APC&EC Rule 6.201 on March 31, 2023, until DEQ issued the renewal Permit on June 16, 2024. The Permit became effective on July 1, 2024, and expires on June 30, 2029.

13. Part II.7.D of Permit AR0021482, and

Part II.8.D of Permit AR0040967, states:

“For permittees with multiple NPDES permits, only one (1) updated pretreatment program status report (“Annual Report”) is required. The annual report shall reference the Tracking NPDES Permit Number AR0021482 for the permittee’s approved Pretreatment Program.”

14. On October 21, 2022, DEQ received Respondent's 2021 Annual Pretreatment Report for the period of October 1, 2021, to September 30, 2022.
15. On November 8, 2022, DEQ conducted a review of the Industrial Pretreatment Program in accordance with Section 402(b)(8) of the Clean Water Act (CWA), the General Pretreatment Regulations (40 C.F.R. Part 403), and the approved Publicly Owned Treatment Works (POTW) pretreatment program. As part of this review, DEQ reviewed the 2022 Annual Pretreatment Report dated October 14, 2022, submitted by Respondent.
16. The review revealed the following violation:
 - a. Respondent failed to analyze the North Plant facility influent and effluent for the presence of the toxic pollutants listed in 40 C.F.R. Part 122, Appendix D (NPDES Application Testing Requirements) Table II required for the second quarterly period due by March 31, 2022. This is a violation of Part II.7.C of Permit AR0021482 and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
17. On October 12, 2023, DEQ sent Respondent a proposed Order.
18. On October 31, 2023, Respondent and DEQ met to review the proposed Order. Respondent agreed to submit an amended October 2021 to September 2022 Pretreatment Report, copies of their Notice of Violations (NOV) with responses, and sampling data or self-sampling reports.
19. On November 8, 2023, Respondent submitted a revised Pretreatment Report for October 2021 to September 2022. The NOVs for the same time-period were also included.
20. On August 12, 2024, DEQ conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the South Plant, North Plant, and Lee Creek Industrial Park Permits.

21. The review revealed that Respondent reported the following violations of the permitted effluent discharge limits detailed in Part I.A of each respective Permit from June 1, 2021, through June 30, 2024:

a. South Plant, Permit AR0021482:

- (1) One (1) violation of Carbonaceous Biochemical Oxygen Demand;
- (2) One (1) violation of Total Suspended Solids; and
- (3) Eight (8) violations of Ammonia Nitrogen.

b. North Plant, Permit AR0040967:

- (1) Three (3) violations of Carbonaceous Biochemical Oxygen Demand;
- (2) One (1) violation of Total Suspended Solids; and
- (3) One (1) violation of Ammonia Nitrogen.

c. Lee Creek Industrial Park, Permit AR0037567:

- No violations.

22. Each of the fifteen (15) discharge limitation violations listed in Paragraph 20 above constitutes a separate permit violation for a total of fifteen (15) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

23. On January 2, 2025, DEQ conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the South Plant, North Plant, and Lee Creek Industrial Park Permits. The review revealed that Respondent reported the following violations of the permitted effluent discharge limits detailed in Part I.A of each respective Permit from July 1, 2024, through November 30, 2024:

a. South Plant, Permit AR0021482:

- (1) One (1) violation of Carbonaceous Biochemical Oxygen Demand;

(2) One (1) violation of Total Suspended Solids; and

(3) Three (3) violations of Ammonia Nitrogen.

b. North Plant, Permit AR0040967:

- No violations.

c. Lee Creek Industrial Park, Permit AR0037567:

- No violations.

24. Each of the five (5) discharge limitation violations listed in Paragraph 23 above constitutes a separate permit violation for a total of five (5) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. On or before the effective date of this Order, Respondent shall submit a certification of compliance with the effluent discharge limits set forth in Part I.A of the South Plant, North Plant, and Lee Creek Industrial Park Permits. If Respondent is unable to certify compliance with all permitted effluent limits, Respondent shall, within thirty (30) calendar days of the effective date of this Order, 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 Paragraphs 21 and 23 and prevent future violations. The CAP shall also 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. If a CAP is submitted, 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.A of the respective Permits. The progress reports shall be due 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 a final compliance report that includes a certification of compliance within thirty (30) calendar days of the final compliance date in the approved CAP, but no later than December 31, 2026.

3. Before the effective date of this Order, Respondent shall develop a schedule for sampling to ensure all samples are taken and analyzed timely.

4. 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). 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 the 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 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.

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. COMMISSION Director of Utilities
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 4 DAY OF February, 2025.

Bailey Taylor
BAILEY M. TAYLOR,
CHIEF ADMINISTRATOR OF ENVIRONMENT AND DEQ DIRECTOR
ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

City of Van Buren Municipal Utilities

BY: Steve Dufresne

(Signature)

STEVE DUFRESNE
DIRECTOR OF UTILITIES

(Typed or printed name)

TITLE: _____

STEVE DUFRESNE
DIRECTOR OF UTILITIES

DATE: 1-21-2025

RESOLUTION NO. 01-2025 _____

A RESOLUTION AUTHORIZING THE CITY OF VAN BUREN MUNICIPAL UTILITIES COMMISSION TO ENTER INTO A CONSENT ADMINISTRATIVE ORDER WITH THE ARKANSAS DEPARTMENT OF ENERGY & ENVIRONMENT, DIVISION OF ENVIRONMENTAL QUALITY (DEQ)

WHEREAS, it is in the City's best interest to enter into an agreement with DEQ and resolve the violations of the Arkansas Water and Air Pollution Control Act listed in the proposed Consent Administrative Order.

WHEREAS, the Commission and Director of Utilities have developed a plan of action to address the issues listed in the proposed Consent Administrative Order.

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL UTILITIES COMMISSION OF THE CITY OF VAN BUREN:

- 1. The proposed Consent Administrative Order has been reviewed and approved by the Commission in a duly convened meeting with a quorum present.*
- 2. The Municipal Utilities Commission of the City of Van Buren authorizes the Director of Utilities (Authorized Signatory) to sign the proposed Consent Administrative Order.*
- 3. The Municipal Utilities Commission of the City of Van Buren authorizes the Director of Utilities to expend funds for compliance activities required by the proposed Consent Administrative Order including but not limited to the payment of a civil penalty as set forth in the proposed Consent Administrative Order.*

Adopted on this 21st day of January 2025

APPROVED: _____

Todd Young, Commission Chairman

ATTEST: _____

Kathy Geppert, Secretary