

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Nashville
426 North Main
Nashville, AR 71852

LIS No. 23- 080
Permit No. AR0021776
AFIN 31-00036

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 Nashville (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 743 Highway 27 South in Nashville, Howard County, Arkansas.
2. Respondent discharges treated wastewater through an 18-inch pipe to Mine Creek, thence to Millwood Lake, thence to Little River, thence to the Red River in Segment 1C of the Red 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 AR0021776 (“Permit”) to Respondent on November 12, 2020. The Permit became effective on December 1, 2020, and expires on November 30, 2025.

10. On December 30, 2020, DEQ conducted a routine compliance evaluation inspection of the facility. The inspection revealed the following violations:

a. Sludge build-up was noted in treatment Pond 2. This is a violation of Part III, Section B, Condition 1 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

11. On March 11, 2021, DEQ notified Respondent of the inspection results via letter and requested a response addressing the violation be sent to DEQ by March 25, 2021.

12. On August 10, 2022, DEQ mailed a "Failure to Respond" letter to Respondent, for failure to respond to the December 30, 2020 inspection and requested a response addressing the violation be sent to DEQ by August 29, 2022.

13. On August 25, 2022, Respondent replied to DEQ's inspection dated December 30, 2020, but failed to submit photographic documentation that the violation had been corrected.

14. On January 31, 2023, DEQ conducted a review of the certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.

15. 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 January 1, 2019, through December 31, 2022:

- a. Twenty (20) violations of Ammonia Nitrogen;
- b. Four (4) violations of Total Suspended Solids;
- c. Two (2) violations of Carbonaceous Biochemical Oxygen Demand; and
- d. Two (2) violations of Whole Effluent Toxicity - *P. promelas*.

16. Each of the twenty-eight (28) discharge limitation violations listed in Paragraph 15 above constitutes a separate permit violation for a total of twenty-eight (28) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

17. The review of the DMRs also revealed that Respondent reported NODI Code P, to denote Laboratory Error or Invalid Test, on outfall 001-B for the following monitoring period end dates:

- a. 9/30/2022
 - i. For two (2) occurrences of Fecal Coliform;

- b. 12/31/2022
 - i. For three (3) occurrences of Nitrate + Nitrate; and
 - ii. For three (3) occurrences of Total Phosphorus.

The use of NODI Code P is a violation of Part I, Section A of the Permit and therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

18. On January 31, 2023, DEQ also conducted a review of the Sanitary Sewer Overflows (SSOs) reported by Respondent in accordance with the Permit for the period of January 1, 2019, through December 31, 2022. The review revealed that Respondent reported fifty-four (54) SSOs totaling 2,769,100 gallons. Respondent is permitted to discharge treated municipal wastewater from its permitted outfall. Respondent is not permitted to discharge untreated wastewater from its collection system. Each SSO constituted an unpermitted discharge. Each unpermitted discharge violated Ark. Code Ann. § 8-4-217(b)(1)(E) and therefore violated Ark. Code Ann. § 8-4-217(a)(3).

19. On August 16, 2023, DEQ conducted a review of the certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.

20. The review of the DMRs revealed that Respondent reported NODI Code E, to denote Failed to Sample/Required Analysis Not Conducted, on outfall 001-B for the following monitoring period end date:

- a. 5/31/2023
 - i. For three (3) occurrences of Nitrate + Nitrate; and
 - ii. For three (3) occurrences of Total Phosphorus.

The use of NODI Code E is a violation of Part I, Section A of the Permit and therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

21. On August 16, 2023, DEQ also conducted a review of the Sanitary Sewer Overflows (SSOs) reported by Respondent in accordance with the Permit for the period of January 1, 2023, through July 31, 2023. The review revealed that Respondent reported twelve (12) SSOs totaling 4,078,820 gallons. Respondent is permitted to discharge treated municipal wastewater from its permitted outfall. Respondent is not permitted to discharge untreated wastewater from its collection system. Each SSO constituted an unpermitted discharge. Each unpermitted discharge violated Ark. Code Ann. § 8-4-217(b)(1)(E) and therefore violated 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, for review and approval, a comprehensive Corrective Action Plan (CAP) developed by a Professional Engineer (P.E.) 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 15 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 of December 31, 2026, contained in the approved CAP. The milestone schedule and final compliance by December 31, 2026, 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

approved CAP and the permitted effluent limits set forth in Part I, Section A of the Permit.

Respondent shall submit the final compliance report by December 31, 2026.

3. On or before the effective date of this Order, Respondent shall provide adequate documentation to support its August 25, 2022 response to the inspection performed on December 30, 2020. An adequate response should include photographic documentation, disposal records for the removed sludge, and details of the corrective actions taken.

4. Within twelve (12) months of the effective date of this Order, Respondent shall develop and submit to DEQ for review and approval a Sewer System Evaluation Study (SSES) for its sanitary sewer collection system. The SSES must be certified by a P.E. licensed in the state of Arkansas.

a. The SSES should, at minimum, have the following elements:

- i. Perform smoke testing in all areas of the collection system, beginning with the highest priority areas;
- ii. Perform televising of lines in areas deemed necessary based on smoke testing in order to locate leaks and to determine the appropriate method of repair;
- iii. Develop a manhole inspection program, beginning in the highest priority areas;
- iv. Develop a plan to address collection system deficiencies through rehabilitation, repair, or replacement;
- v. Recommend a method of repair and develop a cost estimate for such. Based on the results of the above studies, Respondent will be able to identify areas

requiring improvements and prioritize those improvements. Short-term and long-term improvements will be considered to remedy deficiencies; and

vi. Develop an SSO Plan with a milestone schedule that details the corrective actions Respondent will take to address the collection system deficiencies and the final date of compliance not to exceed December 31, 2028. Upon approval of the SSO Plan by DEQ, Respondent shall comply with the SSO Plan, milestone schedule, and final compliance of December 31, 2028, contained in the approved SSO Plan. The milestone schedule and final compliance by December 31, 2028, shall be fully enforceable as terms of this Order.

b. The SSES shall include a collection system management, operation, and maintenance (CMOM) program that Respondent will implement immediately to better manage, operate, and maintain the collection systems; investigate capacity-constrained areas of the collection system; proactively prevent SSOs; and respond to SSO events.

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 Six Hundred Dollars (\$8600.00), of which Five Thousand Six Hundred Dollars (\$5600.00), shall be conditionally SUSPENDED by DEQ. If Respondent fully complies with this Order, the suspended civil penalty of Five Thousand Six Hundred Dollars (\$5600.00) shall be DISMISSED by DEQ. The suspension and dismissal of civil penalties are contingent upon Respondent complying with the terms of this Order. If Respondent violates any term of this Order, the full balance of Eight Thousand Six Hundred Dollars shall become due and payable immediately to DEQ. Payment of the civil penalty in the

amount of Three Thousand Dollars (\$3000.00) 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.

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 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.

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 16th DAY OF OCTOBER, 2023.



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

APPROVED AS TO FORM AND CONTENT:

City of Nashville

BY: 
(Signature)

Larry Dunaway
(Typed or printed name)

TITLE: Mayor

DATE: 10-6-23

RESOLUTION NO. 2003-14

A RESOLUTION AUTHORIZING THE CITY OF Nashville 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 Mayor and Public Works Director or other designated person, working with a Professional Engineer, have developed a plan of action to address the issues listed in the proposed Consent Administrative Order.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF Nashville :

- 1. The proposed Consent Administrative Order has been reviewed and approved by the City Council in a duly convened meeting with a quorum present.*
- 2. The City Council of the City of Nashville authorizes the Mayor to sign the proposed Consent Administrative Order.*
- 3. The City Council of the City of Nashville authorizes the Mayor and treasurer 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 25th day of September, 2023

APPROVED: Larry Dunaway
Mayor

ATTEST: J. Haan
City Clerk

