

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT  
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of West Memphis  
West Memphis Utilities Commission  
P.O. Box 1868  
West Memphis, AR 72301

LIS No. 20- **134**  
Permit No. AR0022039  
AFIN 18-00879

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 regulations and rules issued thereunder by the Arkansas Pollution Control and Ecology Commission (APC&EC).

The issues herein having been settled by the agreement of the City of West Memphis (Respondent) and the Division of Environmental Quality<sup>1</sup> (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 502 South Loop, West Memphis, Crittenden County, Arkansas.
2. Respondent discharges treated wastewater to the Mississippi River in Segment 6C of the Mississippi River Basin.

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<sup>1</sup> Pursuant to Act 910 of 2019, the Arkansas Transformation and Efficiencies Act, the former Arkansas Department of Environmental Quality is now the Division of Environmental Quality in the newly created Department of Energy and Environment.

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 regulation 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 AR0022039 (“Permit”) to Respondent on July 22, 2013. On October 30, 2018, DEQ renewed the Permit with an effective date of November 1, 2018, and an expiration date of October 31, 2023.

## SANITARY SEWER OVERFLOWS

10. DEQ conducted a review of the sanitary sewer overflows (SSOs) and treatment bypasses reported by Respondent in accordance with the Permit for the period of March 1, 2016 through March 31, 2019. The review revealed the following:

- Respondent reported 134 SSOs. Respondent reported that eighty-three (83) of those SSOs reached waters of the state. Respondent is permitted to discharge treated municipal wastewater from its facility. 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).

11. On February 20, 2018, Respondent and the DEQ Office of Water Quality (OWQ) met to discuss the continuing SSOs and unpermitted discharges reported by Respondent.

12. On February 21, 2018, DEQ sent Respondent a letter requesting the submission of a Corrective Action Plan (CAP) to address the on-going SSOs and unpermitted discharges.

13. On April 11, 2018, Respondent submitted a CAP to DEQ. The CAP stated that Respondent would conduct testing to identify sources of inflow and infiltration (I&I) and a plan to rehabilitate the collection system.

14. On April 24, 2018, DEQ notified Respondent via letter that the CAP was approved. In that letter, DEQ requested that Respondent complete the Wastewater Treatment Facility (WWTF) Recommended Hydraulic Improvement Report by November 30, 2019, and submit semi-annual progress reports with the first report due by May 31, 2019.

15. On December 4, 2018, Respondent met with the OWQ to discuss the progress made to address the SSOs and unpermitted discharges.

16. On June 27, 2019, Respondent submitted its first semi-annual progress report in response to DEQ's request. The progress report detailed the actions taken to implement the CAP and address the SSOs and unpermitted discharges. The progress report also stated that the WWTF Recommended Hydraulic Improvement Report had been on hold until all the models were completed. DEQ had no comments on this semi-annual report.

17. On December 5, 2019, Respondent met with OWQ to discuss its April 11, 2018 CAP, and a proposed Order. Respondent agreed to submit a revised CAP, WWTF Recommended Hydraulic Improvement Report, and documentation justifying a design based on the minimum capacity necessary to contain the inflow and infiltration and direct precipitation by January 31, 2020.

18. On December 11, 2019, Respondent submitted a letter to DEQ requesting a penalty reduction and to extend the date of final compliance to December 31, 2023.

#### DISCHARGE MONITORING REPORTS

19. DEQ conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent for January 2016 through September 2019.

20. The review revealed Respondent reported No Analysis Conducted for Outfall 001 for the Whole Effluent Toxicity (WET) testing on the December 2017 DMR. Failure to conduct WET testing 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. The review also revealed that Respondent reported the following violation of the permitted effluent discharge limits detailed in Part I, Section A of the NPDES Permit from March 1, 2016 through March 31, 2019:

- a. One (1) violation for Fecal Coliform.

The discharge limitation violation listed above constitutes a violation of Part 1, Section A of the Permit and therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

#### PRETREATMENT

22. Part II.7.A of the Permit states that Respondent shall operate an industrial pretreatment program in accordance with Section 402(b)(8) of the Clean Water Act (CWA), the General Pretreatment Regulations (40 CFR Part 403), and the approved POTW pretreatment program submitted by Respondent.

23. On August 10, 2018, Respondent informed DEQ of a failure to inspect each Significant Industrial User (SIU) at least once per year in accordance with the Permit. This failure is a violation of 40 CFR § 403.8(f)(2)(v) and Part II.7.A.(2) of the Permit and therefore a violation 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 Revised CAP. Upon review and approval of the Revised CAP by DEQ, Respondent shall implement the CAP and comply with the terms, milestone schedule, and final compliance date of December 31, 2023, contained in the approved CAP. The approved CAP, milestone schedule, and final compliance date of December 31, 2023, shall be fully enforceable as terms of this Order.
2. On or before the effective date of this Order, Respondent shall submit a WWTF Recommended Hydraulic Improvement Report. Upon review and approval by DEQ of the WWTF Recommended Hydraulic Improvement Report, Respondent shall implement the recommendations of the report. The recommendations of the approved WWTF Recommended Hydraulic Improvement Report shall be fully enforceable as terms of this Order.

3. Within thirty (30) days of the effective date of this Order, Respondent shall submit, for review and approval by DEQ, justification developed by a Professional Engineer licensed in the state of Arkansas, for the selected design storm event and the potential for that selected design to eliminate capacity related SSOs and minimize peak flows at the WWTF.

4. Respondent shall submit its next semi-annual progress report on the revised CAP to DEQ on or before June 30, 2020. At a minimum, the report shall include a list of the corrective actions initiated and completed since the previous report, the number of SSOs that occurred during the reporting period, any costs expended for completed projects, a statement of the overall progress of the CAP, a quantitative assessment of the reduction of inflow and infiltration resulting from the completed work, and upcoming scheduled projects. Respondent shall continue to submit semi-annual progress reports thereafter until this Order is closed.

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 Dollars (\$4,000.00). 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 Regulation No. 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 Regulation No. 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 5<sup>th</sup> DAY OF March, 2020.

Becky W. Keogh  
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

City of West Memphis

BY: Marcus McClendon  
(Signature)

Marcus McClendon  
(Typed or printed name)

Patricia Lane

TITLE: Mayor

DATE: 2/20/20

RESOLUTION NO. 2223

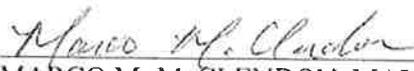
**A RESOLUTION AUTHORIZING THE MAYOR TO SIGN A CONSENT ADMINISTRATIVE ORDER FOR THE WEST MEMPHIS UTILITY COMMISSION, AND FOR OTHER PURPOSES.**

**WHEREAS**, City of West Memphis has settled by agreement with the Arkansas Department of Energy and Environment, Division of environmental Quality, for Permit No. AR0022039, AFIN 18-00879; and

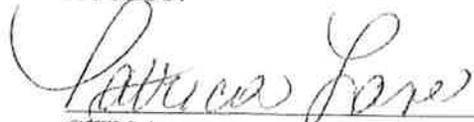
**WHEREAS**, the West Memphis City Council desires to authorize the Mayor to sign the Consent Administrative Order for Permit No. AR0022039, AFIN 18-00879, from the Arkansas Department of Energy and Environment;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST MEMPHIS, ARKANSAS, THAT** the Mayor is hereby authorized to sign the Consent Administrative Order from Arkansas Department Energy and Environment, Division of environmental Quality, for Permit No. AR0022039, AFIN 19-8-00879, a copy of which is attached to this Resolution.

**ADOPTED** this 20 day of September 2020.

  
MARCO M. McCLENDON, MAYOR

ATTEST:

  
CITY CLERK

2/13/2020 @ 2:12pm  
DWebb