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Wastewater Enforcement: Arkansas Department of Energy & Environment - Division of Environmental Quality and Malvern Industrial Facility Enter into Consent Administrative Order

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The Arkansas Department of Energy & Environment – Division of Environmental Quality (“DEQ”) and Acme Brick Company (“Acme”) entered into a March 21st Consent Administrative Order (“CAO”) addressing alleged violations of a Clean Water Act National Pollution Discharge Elimination System (“NPDES”) permit. See LIS No. 22-036.

The CAO provides that Acme operates a minor industrial wastewater treatment facility (“Facility”) in Malvern, Arkansas.

The Facility is stated to discharge treated wastewater to an unnamed tributary which eventually flows to the Arkansas River. Such discharge is regulated pursuant to an NPDES Permit.

DEQ is stated to have conducted a review on August 10, 2018, of the Bypass Reports submitted by Acme in accordance with the NPDES Permit. The reports are stated to have indicated three bypasses of the Facility during the period August 1, 2015, through July 31, 2018.

Acme is stated to have not provided information about the steps taken to reduce, eliminate, or prevent reoccurrence of the bypasses. Such bypasses are stated to have constituted a violation of the NPDES Permit.

DEQ is stated to have requested that Acme submit a Corrective Action Plan (“CAP”) to address and prevent future bypasses. The requested CAP was to include a milestone schedule, final date of compliance, and be certified by an Arkansas Professional Engineer. Acme provided a CAP on November 30, 2018.

Acme is stated to have notified DEQ on December 10, 2018, that a bypass began on December 9, 2018. However, the response is stated to have not provided information regarding addressing recurrence of the bypass.

A revised CAP was provided to DEQ by Acme on March 8, 2019. Certain additional information was requested by DEQ which was provided by Acme, including a plan for temporary treatment and bypass method while the CAP milestones were being completed.

DEQ subsequently informed Acme that the CAP would be complete with the following stipulations:

1. The use of spent lime is not approved at this time.
2. New hydrated lime would be an acceptable method.
3. Any new construction or modification would require submission of the applicable permit application at least 180 days in advance of project commencement.
4. Maintenance and refurbishment of existing structures would typically not require a new permit.
5. A revised milestone schedule and final compliance date should be submitted for final approval by August 31, 2019.
6. Progress reports should be submitted each calendar quarter until final compliance is achieved.
7. A final compliance report stamped by a Professional Engineer licensed in the state of Arkansas shall be submitted no later than the final compliance date in the milestone schedule referenced in condition 5. The report, at minimum shall certify all milestones have been completed and the facility, with normal operation and maintenance, should remain in compliance with the Permit.

The milestone schedule was subsequently revised due to material delays, scheduling difficulties and underestimated project costs related to the COVID pandemic.

A milestone schedule compliance date of January 31, 2025, was subsequently approved by DEQ.

DEQ conducted a review of certified Discharge Monitoring Reports (“DMRs”) submitted by Acme on November 30, 2021. The review is stated to have indicated Acme failed to conduct analysis for the following monitoring period end dates:

- June 30, 2018
- May 31, 2020

Acme is required to comply with the terms, milestone schedule, and final compliance date in the approved CAP and milestone schedule submitted to DEQ on July 30, 2021. Such schedule and final compliance date are fully enforceable as terms of the CAO.

Further, quarterly reports are required to address progress until the CAO is closed.

Paragraph 3 of the Order and Agreement section of the CAO provides an approved temporary bypass process during the period the CAP is being implemented. It requires the documentation of the volume and duration of all bypasses and a requirement to conduct sampling analysis of the volume and nature of the combined effluent discharge from outfall 003-C in accordance with a described chart.

A civil penalty of \$7,000 is assessed which could be reduced to \$3,500 if the CAO is returned to DEQ within 20 calendar days of its receipt.

A copy of the CAO can be downloaded [here](#).