

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Bethel Heights
530 Sunrise Drive
Bethel Heights, AR 72764

LIS No. 19-070
Permit No. 4725-WR-5
AFIN 04-00630

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.*, the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*, and the regulations 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 Bethel Heights (Respondent) and the Division of Environmental Quality¹ (DEQ or “Division”), 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 decentralized wastewater treatment system (WWTS) serving the City of Bethel Heights, Benton County, Arkansas.

¹ 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.

2. DEQ is authorized under Ark. Code Ann. § 8-4-101 *et seq.*, and APC&EC Regulation No. 17: Arkansas Underground Injection Control (UIC) Code to issue permits for wastewater treatment systems that include drip irrigation dispersal fields.
3. DEQ issued No-Discharge Permit 4725-WR-5 (“Permit”) to Respondent on July 2, 2015. The Permit became effective on September 1, 2015, and expires on August 31, 2020.
4. Respondent’s WWTS consists of a septic tank pumped effluent (STEP) sewer collection system that flows to one of two (2) wastewater treatment units. Each wastewater treatment unit is designed to distribute the effluent to the subsurface via the adjacent drip irrigation system. The Lincoln Street wastewater treatment unit (“Lincoln WWTU”) is located on eleven (11) acres and includes Phases 1, 2, and 3 of Respondent’s drip irrigation fields. The North Oak Street wastewater treatment Unit (“North Oak WWTU”) is located on ten (10) acres and includes Phase 4, subdivided into Phase 4a and Phase 4b, of Respondent’s drip irrigation fields.
5. Each residence is connected to a 1,500-gallon STEP unit, and each commercial business is connected to a STEP unit with a capacity of at least 1,500 gallons. The wastewater from each STEP unit is pumped to the Lincoln WWTU or the North Oak WWTU through small diameter (2"-4") pressure lines for treatment. At each WWTU, the partially treated wastewater passes through recirculation tanks where additional settling of solids occurs and then through treatment pods. A portion of the partially treated wastewater enters the dose tank and is dispersed to the drip irrigation fields.
6. A drip irrigation dispersal field is a defined area of land containing a system of tubing, with flow regulating emitters, entrenched below the ground surface. The tubing transports effluent from the WWTU for dispersion into the surrounding soil. The drip fields are designed to be the final stage in treatment where removal of nutrients and pathogens from the wastewater

occurs as the emitters slowly disperse the wastewater into the biologically-active root zone of plants for uptake and biological use.

7. Based on the topography of the drip irrigation dispersal fields at the Lincoln WWTU, ponding or pooling water from Phase 1-3 drip irrigation fields can flow through the natural drainages present to an unnamed tributary of Puppy Creek, thence to Puppy Creek, thence to Spring Creek, thence to the Illinois River.

8. Ark. Code Ann. § 8-4-217(a)(2)–(3) provides:

(a) It shall be unlawful for any person to:

(2) Place or cause to be placed any sewage, industrial waste, or other wastes in a location where it is likely to cause pollution of any waters of this state;

(3) Violate any provisions of this chapter or of any rule, regulation, or order adopted by the [APC&EC] under this chapter or of a permit issued under this chapter by the [DEQ].

9. 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.

10. 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.”

CAO LIS 15-131

11. On November 2, 2015, DEQ and Respondent entered into Consent Administrative Order (CAO) LIS 15-131 to address numerous occasions of effluent surfacing and permit limit exceedances. CAO LIS 15-131 became effective on January 10, 2016.

12. On June 24, 2016, DEQ received a revised Corrective Action Plan (CAP) from Respondent. This revised CAP was approved and incorporated into CAO LIS 15-131 by amended CAO LIS 15-131-001, which became effective on December 13, 2016.

13. On January 6, 2017, DEQ received a letter from Respondent certifying that improvements to Respondent's WWTS had been completed and were working properly, and that Phases 1-4 were in compliance with Respondent's Permit limits.

14. On January 27, 2017, DEQ closed CAO LIS 15-131, as amended by CAO LIS 15-131-001.

Inspection Violations

15. On February 4, 2019, DEQ conducted a reconnaissance inspection at Respondent's WWTS in response to a complaint. The inspection revealed the following violations:

- a. DEQ observed ponding or pooling water on the surface ("surfacing") on the drip irrigation fields for Phases 1, 2, 3, and 4. This condition violated Part II, Condition 3 of the Permit and therefore violated Ark. Code Ann. § 8-4-217(a)(3).
- b. DEQ observed damaged equipment and piping, which was leaking liquid onto the surface of Phases 1, 2, 3, and 4 of the drip irrigation fields. This condition violated Part II, Condition 3 of the Permit and therefore violated Ark. Code Ann. § 8-4-217(a)(3).
- c. DEQ observed evidence of offsite runoff next to the fence line from Phases 1, 2, 3, and 4 of the drip irrigation fields. This condition violated Part III, Condition 3 of the Permit and therefore violated Ark. Code Ann. § 8-4-217(a)(3).

16. On February 12, 2019, DEQ conducted a follow-up compliance evaluation inspection of Respondent's WWTS. The inspection revealed the following violations:

- a. DEQ observed surfacing on the drip irrigation fields for Phases 1, 2, 3, and 4b. This condition violated Part II, Condition 3 of the Permit and therefore violated Ark. Code Ann. § 8-4-217(a)(3).
 - b. DEQ observed that the drip irrigation fields for Phases 2 and 3 did not have adequate vegetative cover. This condition violated Part II, Condition 7 of the Permit and therefore violated Ark. Code Ann. § 8-4-217(a)(3).
 - c. DEQ observed a broken solenoid valve in the Phase 4a drip irrigation field. According to Respondent, the solenoid valve was damaged in November 2018, and had not been repaired. This condition violated Part III, Condition 10 of the Permit and therefore violated Ark. Code Ann. § 8-4-217(a)(3).
17. On March 18, 2019, DEQ notified Respondent of the February 12, 2019 inspection results.
 18. On March 21, 2019, DEQ notified Respondent of the February 4, 2019 inspection results.
 19. On April 8, 2019, DEQ received a response from Respondent for the February 12, 2019 inspection.
 20. On April 18, 2019, DEQ notified Respondent that the response to the February 12, 2019 inspection was inadequate.
 21. On May 6, 2019, DEQ sent a letter to Respondent requesting that Respondent submit a Corrective Action Plan (CAP) within ninety (90) days of receiving DEQ's letter. The letter stated that at a minimum the CAP shall include the following:

A facility plan to include a complete evaluation of the wastewater treatment and collection systems, estimate of monthly flows based on actual billing connections; as built drawings, a study of alternatives evaluating upgrading the wastewater treatment and collection system, replacing the current system with other technologies, or constructing a force main to connect the facility's

wastewater to another municipal or regional wastewater treatment system. The study shall include a comprehensive cost analysis and comparative evaluation of the current wastewater treatment systems operation, repair, maintenance, cost of ongoing compliance, etc. vs. other available wastewater treatment technologies or wastewater regionalization, and include 10-year, 20-year, and 40-year population and connection projection estimates.

22. On May 16, 2019, DEQ conducted a follow-up inspection at the WWTS. The inspection revealed the following violations:

- a. DEQ observed surfacing on the drip irrigation fields for Phases 1, 2, 3, and 4. DEQ noted areas where water was pooled along the east perimeter of the property and under the fence. This condition violated Part II, Condition 3 of the Permit and therefore violated Ark. Code Ann. § 8-4-217(a)(3).
- b. DEQ observed several PVC pipes with broken plastic caps in the ground along the perimeter of the drip irrigation fields for Phases 1, 2, and 3. DEQ observed a trench in these fields with pooling water in it. These conditions indicated that Respondent is not operating and maintaining its wastewater treatment systems properly in violation of Part III, Condition 10 of the Permit and therefore violated Ark. Code Ann. § 8-4-217(a)(3).

Reported Violations

23. DEQ conducted a review of the certified Monthly Monitoring Reports (MMRs) submitted by Respondent in accordance with the Permit from January 1, 2019 through June 30, 2019.

- a. Respondent reported twenty-six (26) exceedances of the permitted effluent limits in violation of Part I, Table 1 of the Permit:

- (1) Seventeen (17) violations for Total Suspended Solids (TSS); and

(2) Nine (9) violations for Carbonaceous Biochemical Oxygen Demand (CBOD5).

Each of the twenty-six (26) exceedances of the permit limits listed above constitutes a separate permit violation for a total of twenty-six (26) separate violations of Part 1, Table 1 of the Permit and also of Ark. Code Ann. § 8-4-217(a)(3).

- b. Respondent reported effluent surfacing on the drip irrigation dispersal fields for Phases 1, 2, 3, and 4 during fourteen (14) monthly monitoring periods. Each of the fourteen (14) reported occurrences of surfacing effluent is a violation of Part II, Condition 3 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

Sampling Investigation

24. On July 16, 2019, DEQ conducted a sampling inspection at Respondent's WWTS in response to reports of surfacing wastewater and continuing complaints. On August 1, 2019, DEQ informed Respondent of the results of that inspection.

25. Samples were collected from the partially treated wastewater flowing to Phase 2, 3, 4a, and 4b drip irrigation fields and analyzed for all Permit parameters. Samples were not collected from Phase 1 effluent because it was inactive at the time of the inspection. The following is a summary of those sample results:

- a. Phase 2 effluent sample results for Fecal Coliform Bacteria (FCB) were "Too Numerous to Count" (TNTC)² and CBOD5 exceed the Permit effluent limitations.
- b. Phase 3 effluent sample results did not result in any Permit effluent exceedances.

² Too Numerous to Count means that the most probable number of colony forming units of bacteria exceeded the number of units that could be counted using the identified analytical method.

- c. Phase 4a effluent sample results did not result in any Permit effluent exceedances.
- d. Phase 4b effluent sample results exceeded the TSS Permit effluent limitation.

Each of the three (3) exceedances of Respondent's permitted effluent limitations is a violation of Part 1 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

26. Samples were collected from areas with surfacing on the drip irrigation fields for Phases 1, 2, 3, and 4b and analyzed for FCB, *Escherichia coli* (E.coli), and Total Phosphorus. The following is a summary of those sample results:

- a. Phase 2 Drip Field (BH01) sample results were TNTC for FCB and 496 MPN/100mL for E. coli.
- b. Phase 3 Drip Field (BH03) sample results were TNTC for FCB and E. coli.
- c. Phase 1 Drip Field Pooled Water (BH04) sample results were TNTC for FCB and E. coli.
- d. Phase 4B Drip Field (BH05) sample results were <1 MPN/100mL for FCB and E. coli.

27. Part II, Condition 3 of the Permit states:

Wastewater shall not be discharged from this operation to the waters of the State or onto the land in any manner that may result in pooling, ponding, or runoff to the waters of the State. If any of the above conditions occur, dispersal shall cease immediately. Resumption of application activities cannot occur until all conditions of the permit are met. Note: Any evidence of runoff must be reported within 24 hours to the Enforcement Branch of the Water Division in accordance with Standard Condition 13 of Part III.

28. During the Sampling Investigation, DEQ observed large areas with significant surfacing on the drip irrigation fields for the Phase 1 and Phase 2. DEQ observed water primrose in Phase 1 and Phase 2 of Respondent's drip irrigation fields. Phase 2 was saturated to the extent that wastewater was observed flowing within the phase. During the Sampling Investigation, effluent

was flowing to Phase 2. Respondent did not immediately cease dispersal to Phase 2, as required by Part II, Condition 3 of the Permit. Based on the observed pooling or ponding and the large stands of water primrose, Respondent continued dispersing effluent to the Phase 1 and Phase 2 fields for enough time to enable the water primrose to establish itself and proliferate in the area of the drip irrigation fields with pooling or ponding water. The observations of pooling or ponding and the growth of the water primrose indicate a failure to operate and maintain the WWTS properly. This failure is a violation of Part III, Condition 10 of the Permit, and therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

29. Respondent's Waste Management Plan (WMP) does not list water primrose as one of the vegetative cover crops for the drip irrigation fields. For the reasons stated above, water primrose is not an appropriate cover crop for the drip irrigation fields. Vegetation that is not appropriate as a cover crop for drip irrigation fields must be removed. Failure to remove the water primrose from the fields is a violation of Part II, Condition 9 of the Permit and therefore violated Ark. Code Ann. § 8-4-217(a)(3).

30. During the Sampling Investigation, DEQ observed grass clippings on the vegetative cover on portions of the Phase 1 drip irrigation field. Respondent stated Phase 1 drip irrigation field was mowed on July 14, 2019. Respondent failed to remove grass clippings from the drip irrigation dispersal field. That failure violated Part II, Condition 8 of the Permit and therefore violated Ark. Code Ann. § 8-4-217(a)(3).

31. On August 2, 2019, Respondent submitted the analytical results from samples taken from areas with surfacing in the drip irrigation fields. GTS, Inc. (GTS) provides geotechnical and testing services. GTS prepared the report with these analytical results for Respondent. GTS

collected samples of surfacing in Phases 1, 2; 3, and 4b on July 30, 2019, and analyzed the samples. The analytical results for E. coli and FCB for these samples are as follows:

Location	Bacteria	Analytical Results
Phase 1	E. coli	6,050 MPM/100mL
	FCB	13,140 MPN/100mL
Phase 2	E. coli	17,230 MPN/100mL
	FCB	37,060 MPN/100mL
Phase 3	E. coli	72,700 MPN/100mL
	FCB	98,040 MPN/100mL
Phase 4	E. coli	850 MPN/100mL
	FCB	7,830 MPN/100mL

32. The elevated levels of FCB and E.coli in the Phase 1, Phase 2, and Phase 3 surfacing samples could flow to waters of the state. DEQ observed evidence of surfacing in the drip irrigation fields. DEQ observed evidence of runoff from Phases 1, 2, and 3. Respondent's July 2019 field samples indicate high levels of FCB in the surfacing samples, and the results for Phase 3 indicated a FCB value of over 98,000 colonies per 100 mL. Together, the significant surfacing in the Phases 1, 2, and 3 of the drip irrigation fields, the observed evidence of water runoff from and flow within the fields, FCB results from DEQ's sampling inspection and from Respondent's July 2019 field samples, and the natural slope of the land indicate that pollutants, specifically FCB, have been placed in a location where those pollutants would be likely to cause pollution of waters of this state. This condition is a violation of Ark. Code Ann. § 8-4-217(a)(2).

33. On July 30, 2019, Respondent collected samples of surfacing water in Phases 1, 2, 3, and 4b. Each of the four (4) samples is evidence of surfacing effluent. Each instance of surfacing effluent is a violation of Part II, Condition 3 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

Failure to Report Permit Violations

34. On July 30, 2019, DEQ requested copies of Respondent's analytical results from July 1, 2017 through July 30, 2019.

35. On August 8, 2019, Respondent provided the 2019 Analytical Reports for May, June, and July to DEQ. GTS prepared these Analytical Reports for Respondent. GTS collected samples for the May 2019 Analytical Reports on May 10, 2019, May 23, 2019, May 24, 2019, and May 31, 2019. GTS collected samples on June 4, 2019, June 14, 2019, and June 20, 2019. GTS collected samples on July 2, 2019, July 15, 2019, and July 30, 2019.

36. In accordance with the Permit, Respondent submitted MMRs for May, June, and July. Respondent reported its analytical results on these MMRs and certified that the reported results were true and accurate.

37. DEQ compared the results reported on Respondent's MMRs with results from Respondent's Analytical Reports. Respondent's 2019 Analytical Reports for May, June, and July documented violations of Respondent's permit limits that Respondent did not report. Failure to report a permit violation is a violation of Part III, Condition 13.A. of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

38. A detailed review of Respondent's 2019 Analytical Reports for May, June, and July and Respondent's May 2019 MMRs, June 2019 MMRs, and July 2019 MMRs revealed that Respondent's MMRs did not reflect all of the results from Respondent's 2019 Analytical Reports. In multiple instances, Respondent's MMRs reported only the results for each parameter that were not a permit violation and excluded other results that indicated a permit violation during that month. If all results for that parameter indicated a violation, Respondent would either submit its MMRs with the result closest to the permit limit or submit an unsupported result.

MMRs that report compliance with permit limits when Respondent's Analytical Reports include results that indicate permit violations may constitute false statements, representations, or certifications in a record required by Respondent's Permit, and therefore Respondent has violated Ark. Code Ann. § 8-4-217(a)(4).

Corrective Action Plan

39. On August 8, 2019, Respondent submitted a Corrective Action Plan (CAP) to DEQ.

Notice of Violation

40. On August 16, 2019, DEQ issued Notice of Violation LIS 19-070 to Respondent.

41. On or about September 4, 2019, Respondent filed a request for hearing with the Commission. The matter was docketed as an administrative hearing in APC&EC Docket No. 19-001-NOV.

42. On September 25, 2019, Jason Steele, Charlotte Steele, Jennifer Steele, Meagan Steele, Lawrence Bowen, Joetta Bowen, Kevin Bowen, and Tina Bowen (collectively, Intervenors), through their attorneys Charles Nestrud and Rachel Hildebrand, submitted comments on NOV LIS 19-070 and contemporaneously filed a Petition to Intervene in Docket 19-001-NOV.

43. The Division reviewed the Intervenors' comments and considered those comments in drafting this Consent Administrative Order.

44. On October 1, 2019, the APC&EC Administrative Law Judge issued an order setting a preliminary hearing in Docket 19-001-NOV for Wednesday, October 16, 2019.

45. On October 11, 2019, Orenco provided an assessment of its site visit on September 10, 2019, that details recommended repairs and actions that require immediate action by Respondent.

46. On October 14, 2019, Respondent submitted a year-to-date progress report that reflects all work performed during 2019 to achieve compliance with the Permit.

- a. Respondent reports the replacement or repair of drip lines in twenty-seven (27) zones, which included excavation and removal of old drip lines, re-contouring the drip line trenches, installing new drip line tubing, replacing and grading soil, re-seeding, connecting the zones to headers, and returning the drip lines to operation.³
- b. Respondent reports repairs to the UV system in two phases at the Lincoln WWTU in addition to replacement of liquid ends and pump motors on dose pumps, ratchet valves, and “T’s” in the treatment pods. Respondent reports repairs to a discharge line to the recirculation pump at the North Oak WWTU in addition to replacement of liquid ends to pumps, pump motors, and meters.⁴
- c. Respondent reports that 665,400 gallons of effluent has been removed from the system from August through October 4, 2019⁵, and Respondent continues to remove effluent from the system as necessary.

47. Respondent has experienced an exceptionally wet year with year-to-date rainfall recorded at approximately 69 inches at the Lincoln WWTU. Annual average rainfall for this area is approximately 47 inches.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

- I. Respondent has agreed to enter into this Order to settle the matters contained in NOV LIS 19-070.

³ Respondent reports expenditures of approximately \$179,385.00 to repair or replace drip lines at the Lincoln WWTU and North Oak WWTU.

⁴ Respondent reports expenditures of approximately \$14,826.35 on these replacements and repairs at the Lincoln WWTU and North Oak WWTU.

⁵ Respondent reports expenditures of \$64,634.07 for the removal of effluent from the WWTS.

2. Respondent shall stop the use of chemicals for wastewater treatment that are not authorized by the Permit.

3. Respondent shall take all measures necessary to prevent pooling, ponding, or surfacing in the WWTS.

Reporting

4. Monthly Monitoring Reports (MMRs)

a. Respondent shall submit all laboratory data, including chain-of-custody, for each sample collected during the monitoring period with the respective MMR.

b. Respondent shall report all analytical results that exceed the limitations set forth in Part I of the Permit on the respective MMRs.

c. Respondent shall report all instances of noncompliance with the Permit using the DEQ Non-Compliance Report.⁶

5. Weekly Reports

a. Respondent shall monitor each zone in each phase on a daily basis and record all occurrences of surfacing. Respondent shall report all occurrences of surfacing observed in each phase and submit laboratory analysis for each area of surfacing in each phase.

b. Respondent shall report the volume of wastewater removed from the WWTS each day. The report shall include receipts for hauling trucks and documentation that the disposal of the removed wastewater has been disposed of in accordance with applicable law.

c. Respondent shall report progress of repairs for each phase or component of the WWTS.

⁶ The Non-Compliance Report is located at <https://www.adeg.state.ar.us/water/enforcement/pdfs/ner-form.pdf>.

- d. Respondent shall report all regular and unanticipated maintenance and repair activities performed at the WWTS.
 - e. If Respondent demonstrates compliance with the Permit and this Order for four (4) consecutive months, then Respondent may request, in writing, a reduction in the reporting frequency.
6. Upon the effective date of this Order, Respondent shall begin monthly on-site Engineering Inspections for submission of a monthly Engineering Inspection Report to DEQ describing the operation, maintenance, collection, and treatment capability of the WWTS. The Engineering Inspection Report shall include any Permit violations observed and any maintenance, modifications, operational changes, or similar changes necessary to operate the WWTS. The Engineering Inspection Report shall be due on the 15th of each month following the month for which the on-site inspection was performed.

Facility Plan

7. On or before December 2, 2019, Respondent shall submit to DEQ the Facility Plan prepared by a professional engineer, licensed in the State of Arkansas and retained by Respondent, that evaluates wastewater management alternatives, including discharge to a regional wastewater treatment facility and replacement of the current WWTS with a traditional point discharge wastewater treatment plant, and a statement, signed by Respondent, indicating which option Respondent has chosen to implement.
8. The Facility Plan shall include an evaluation of the current capacity of the system and its components, specifically:
- a. An estimated rate, in gallons per day (gpd), of influent to the WWTS for weekdays and weekend days;

- b. An estimated rate, in gpd, of wastewater the WWTS can treat based upon the installed components that are operational;
 - c. The loading rate of each zone in each phase of the drip irrigation fields based upon historical soil information and recent soil studies performed by a Professional Soil Classifier registered in the State of Arkansas or a geotechnical engineer licensed in the State of Arkansas; and
 - d. The estimated volume of wastewater that must be removed from the system daily to prevent pollutant limit exceedances, prevent hydraulic overloading of each zone in the WWTS, or a combination of the aforementioned.
9. The Facility Plan shall also include an accurate description of the WWTS to include, at minimum, the following:
- a. Number of treatment pods for each phase and the drip zones associated with those treatment pods;
 - b. Location of all flow meters;
 - c. Influent and effluent flow rate for each phase; and
 - d. Flow diagram of the treatment process that identifies the treatment components for each phase and the associated drip zones.
10. The Facility Plan shall address the assessment of the system and the recommended items that require immediate action identified by Orenco in the letter dated October 10, 2019.
11. On or before February 1, 2020, Respondent shall submit to DEQ, for review and approval, an Implementation Plan with a milestone schedule and date of completion for the option chosen as referenced in Paragraph 7 above. The approved milestone schedule and date of completion shall be enforceable as terms of this Order.

Interim Measures for Operation

12. Respondent shall, within thirty (30) calendar days of the effective date of this Order, provide the following information to DEQ for review and approval:

- a. A report that identifies the zones and phases in the WWTS that require repair;
- b. A report that identifies the treatment components of the WWTS that require repair or replacement and a schedule for those repairs; and
- c. A plan describing the process for daily removal of wastewater from the system, as calculated in the Facility Plan, to prevent pollutant limit exceedances, prevent hydraulic overloading of each zone in the WWTS, or a combination of the aforementioned.
- d. A plan to reestablish ground cover on the drip fields in accordance with the Waste Management Plan.
- e. A plan to evaluate and control stormwater runoff at the WWTS.

13. Respondent shall implement the daily removal of a volume of wastewater as estimated in the Facility Plan and in conjunction with the Haul Off Action Plan, as approved by DEQ, and any adjustments based on the monthly Engineering Inspection Report.

Final Closure

14. Respondent shall, as necessary, submit to DEQ within 180 days of the effective date of this Order, for review and approval, a closure plan for the WWTS. Within sixty (60) calendar days of the final day of operation of the WWTS, Respondent shall submit to DEQ, for review and approval, a milestone schedule for implementation of the closure plan and a final date of completion for closure of the WWTS. The milestone schedule and final date of completion shall be enforceable as terms of this Order.

15. In accordance with APC&EC Reg. 8.615, Respondent agrees that by entering this Order, Respondent's Request for Hearing in APC&EC Docket No. 19-001-NOV is hereby withdrawn and the docket closed without further Commission action.

16. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of One Hundred One Thousand Two Hundred Dollars (\$101,200.00), of which Eighty-one Thousand Two Hundred Dollars (\$81,200.00) shall be conditionally **SUSPENDED** by DEQ. If Respondent fully complies with this Order, the suspended civil penalty of Eighty-one Thousand Two Hundred Dollars (\$81,200.00) shall be **DISMISSED** by DEQ. The suspension and dismissal of civil penalties is contingent upon Respondent complying with the terms of this Order. If Respondent violates any term of this Order, the full balance of One Hundred One Thousand Two Hundred Dollars (\$101,200.00) shall be payable immediately to DEQ on demand. Payment is due within thirty (30) calendar days of the effective date of this Order. Such payments shall be made payable to the Division of Environmental Quality, and mailed to:

DEQ, Fiscal Division
5301 Northshore Drive
North Little Rock, Arkansas 72118-5317

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.

17. 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, the 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

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

25. 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 October, 2019.

Becky W. Keogh
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

City of Bethel Heights

BY: Cynthia J. Black
(Signature)

Cynthia J. Black
(Typed or printed name)

TITLE: Mayor

DATE: October 16, 2019

RESOLUTION NO. 10-15-19-02

**RESOLUTION APPROVING A CONSENT ADMINISTRATIVE ORDER WITH THE
ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT, DIVISION OF
ENVIRONMENTAL QUALITY AND AUTHORIZING THE BETHEL HEIGHTS MAYOR
AND CITY CLERK/RECORDER TO ENTER INTO AN ORDER AND TO EXPEND FUNDS
FOR COMPLIANCE ACTIVITIES REQUIRED IN SAID ORDER**

Be it resolved by the City Council of the City of Bethel Heights:

Section 1: That the City of Bethel Heights, Arkansas City Council having convened on the 15th day of October, 2019 after giving proper notice and having a quorum present, the City Council reviewed the proposed Consent Administrative Order in the matter of City of Bethel Heights pending with the Arkansas Department of Energy and Environment, Division of Environmental Quality (see attached Exhibit A).

Section 2: Upon discussion of the proposed Consent Administrative Order, the City Council has concerns and questions to be resolved with the Arkansas Department of Energy and Environment, Division of Environmental Quality before a final Order is agreed to.

Section 3: NOW THEREFORE, be it resolved by the City Council of the City of Bethel Heights, Arkansas that it does hereby authorize the Mayor and City Clerk/Recorder to sign a Consent Administrative Order on behalf of the City of Bethel Heights upon all concerns being addressed and further authorizes the Mayor and City Clerk/Recorder to expend funds for compliance activities required by the Order including but not limited to the payment of any potential civil penalty as set forth in the Order.

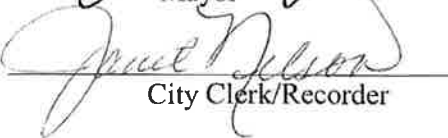
Passed and approved this 15 day of October, 2019.

APPROVED:



Mayor

ATTEST:



City Clerk/Recorder