

CK#1133

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Pleasant Oaks Sewer Improvement District #31
14808 Post Oaks Place
Mabelvale, AR 72103

LIS No. 20-191
Permit No. AR0041424
AFIN 63-00088

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 Arkansas Pollution Control and Ecology Commission (APC&EC).

The issues herein having been settled by the agreement of Pleasant Oaks Sewer Improvement District #31 (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 non-municipal wastewater treatment plant (facility) located at Pleasant Oaks Drive, Mabelvale, Saline County, Arkansas.
2. Respondent discharges treated wastewater to an unnamed tributary of Otter Creek, thence to Otter Creek, thence to Fourche Creek, thence to the Arkansas River in Segment 3C of the Arkansas River Basin.

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.

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. The Division issued NPDES Permit Number AR0041424 (“Permit”) to Respondent on February 26, 2015, with an effective date of March 1, 2015, and an expiration date of February 29, 2020.

10. Part III, Section D, Condition 10 of the Permit requires Respondent to submit a complete permit renewal application at least 180 days prior to the expiration date of the Permit if the activity regulated by the Permit is to continue after the expiration date.

11. Respondent intends to operate this facility beyond the expiration date of the current permit, February 29, 2020.

12. On March 6, 2019, and June 5, 2019, Respondent was notified by letter that the Permit would expire on February 29, 2020, and that in order to continue the regulated activity, a complete renewal application must be submitted no later than September 2, 2019.

13. On October 8, 2019, Respondent submitted a Permit renewal application.

14. On October 11, 2019, the Division notified Respondent that the permit renewal application was incomplete.

15. On December 2, 2019, February 10, 2020, and February 11, 2020, Respondent additional information. On February 14, 2020, the Division notified Respondent by letter that the Permit renewal application was administratively complete.

16. The complete Permit renewal application was not received by September 2, 2019. Failure to submit the Permit renewal application by September 2, 2019 is a violation of Part III, Section D, Condition 10 of the Permit and therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

17. On February 13, 2020, DEQ conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.

18. 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 March 1, 2018 through January 31, 2020:

- a. Eight (8) violations of Fecal Coliform Bacteria;

- b. Sixteen (16) violations of Carbonaceous Biochemical Oxygen Demand;
- c. Thirty-seven (37) violations of Ammonia Nitrogen;
- d. Five (5) violations of Dissolved Oxygen; and
- e. Twelve (12) violations of Total Suspended Solids.

19. Each of the Seventy-eight (78) discharge limitation violations listed above constitutes a separate permit violation for a total of Seventy-eight (78) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall comply with the expired Permit until the effective date of the Permit renewal.
2. Within thirty (30) calendar days of the effective date of this Order, Respondent shall submit to DEQ a certification prepared and stamped by a Professional Engineer licensed in the state of Arkansas that the facility is in compliance with the effluent discharge limitations set forth in Part I, Section A of the Permit, unless a Corrective Action Plan (CAP) is submitted as provided in Paragraph 3 of this Order and Agreement, in which case, Respondent shall comply with all permitted effluent limits no later than December 31, 2020.
3. If unable to comply immediately 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 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 the Findings of Fact and prevent future violations and include a reasonable milestone schedule with a date of final compliance no later than December 31, 2020. Upon review and approval by DEQ, Respondent shall comply with the

terms, milestone schedule, and final compliance date of December 31, 2020, contained in the approved CAP. The milestone schedule and final compliance date of December 31, 2020, shall be fully enforceable as terms of this Order.

4. 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 final permitted effluent limits set forth in Part I, Section A of the Permit. Respondent shall submit the final compliance report by December 31, 2020.

5. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Two Thousand Dollars (\$2000.00) of which One Thousand Five Hundred Dollars (\$1500.00) shall be conditionally SUSPENDED by DEQ. If Respondent fully complies with this Order, the suspended civil penalty of One Thousand Five Hundred Dollars (\$1500.00) 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 Two Thousand Dollars (\$2000.00) shall be payable immediately to DEQ on demand. Payment of Five Hundred Dollars (\$500.00) is due within thirty (30) calendar days of the effective date of this Order. Such payment of the penalty shall be made payable to the Division of Environmental Quality, and mailed to the attention of:

Division of Environmental Quality
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, provided that Respondent requests such an extension in writing and provided that 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. The burden of proving that any delay is caused by circumstances beyond the control of and without the fault of Respondent and the length of the delay attributable to such circumstances shall rest with Respondent. Failure to notify the 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. The undersigned representative of the Respondent certifies that he or she is a Commissioner of Respondent and thus authorized to execute this Order and to legally bind Respondent to its terms and conditions. Execution of this Order by an individual other than a Commissioner of Respondent shall be accompanied by a resolution granting signature authority to said individual as duly ratified by the governing body of the entity.

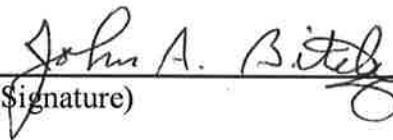
SO ORDERED THIS 3rd DAY OF December, 2020.



BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

Pleasant Oaks Sewer Improvement District #31

BY: 

(Signature)

John A. Bitely

(Typed or printed name)

TITLE: Commissioner

DATE: 11-16-2020
