

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT  
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Earle  
P.O. Box 213  
Earle, AR 72331

LIS No. 20- 203  
Permit No. AR0034304  
AFIN 18-00107

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 the City of Earle (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 1/4 mile east of the intersection of Arkansas State Highway 149 and US Highway 64, and 0.1 miles north of US Highway 64, Earle, Crittenden County, Arkansas.
2. Respondent discharges treated wastewater to the Tyronza River, thence to the St. Francis River in Segment 5A of the St. Francis 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 rule or permit issued pursuant to the Act.

8. Pursuant to Ark. Code Ann. § 8-4-103(c)(1)(B), “each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment.”

9. DEQ issued NPDES Permit Number AR0034304 (“Permit”) to Respondent on November 10, 2015. The Permit became effective on December 1, 2015, and expires on November 30, 2020.

10. On November 20, 2019, DEQ conducted a Reconnaissance Inspection of the facility. The inspection revealed the following violations:

- a) DEQ observed a discharge from a pipe in the levee at the southeast corner of Cell 1 of the treatment system into a ditch that flows to the Tyronza River. Respondent is permitted to discharge from Outfall 001. Respondent is not permitted to discharge through this pipe in the levee. Discharge from an unauthorized outfall is a violation of Part 1, Section A of the Permit and Ark. Code Ann. § 8-4-217(b)(1)(D) and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
- b) Respondent's operator does not have a current wastewater license. According to Part II, Condition 1 of the Permit, the operator of this treatment facility shall hold a minimum of a Class I wastewater operator license issued by the state of Arkansas. Failure to employ, at minimum, a Class I operator is a violation of Part II, Condition 1 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
- c) DEQ observed the following Operation and Maintenance issues at the facility:
  - i. Chlorine disinfection was non-operational, and the injectors were not connected to chlorine bottles.
  - ii. The effluent pump station was non-operational with the pumps placed in Manual mode and check vales in the closed position.
  - iii. Electricity had been disconnected from the Chlorine Building and the Pump Station.
  - iv. Excessive vegetation on lagoon levees.

The above-listed issues constitute four (4) separate violations of Part III, Section B, Condition 1.a of the Permit and therefore four (4) separate violations of Ark. Code Ann. § 8-4-217(a)(3)

11. On December 31, 2019, DEQ conducted a follow-up Compliance Inspection of the facility. The inspection revealed the following violations:

- a) DEQ observed a discharge from a pipe in the levee at the southeast corner of Cell 1 of the treatment system into a ditch that flows to the Tyronza River. Respondent is permitted to discharge from Outfall 001. Respondent is not permitted to discharge through this pipe in the levee. Discharge from an unauthorized outfall is a violation of Part 1, Section A of the Permit and Ark. Code Ann. § 8-4-217(b)(1)(D) and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
- b) Respondent's operator does not have a current wastewater license. According to Part II, Condition 1 of the Permit, the operator of this treatment facility shall hold a minimum of a Class I wastewater operator license issued by the state of Arkansas. Failure to employ, at minimum, a Class I operator is a violation of Part II, Condition 1 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
- c) DEQ observed the following Operation and Maintenance issues at the facility:
  - i. Excessive vegetation, including several trees, growing on the lagoon levees.
  - ii. The electricity had not been restored to the Chlorine Building or the Effluent Pump Station.
  - iii. The Chlorine Building was in a generally derelict condition including the collapse of the roof.

The above-listed issues constitute three (3) separate violations of Part III, Section B, Condition 1.a of the Permit and therefore three (3) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

12. On January 13, 2020, DEQ met with Respondent to discuss the November 20, 2019 and December 31, 2019 inspection findings.

13. On March 3, 2020, DEQ conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.

14. The review revealed that Respondent reported No Data Indicator Code (NODI)=C for “No Discharge” on all the DMRs submitted between the monitoring period end dates of June 30, 2010 through January 31, 2020.

15. On March 10, 2020, the operator of the facility obtained a Class I wastewater operator’s license.

16. On March 26, 2020, DEQ notified Respondent of the inspection findings via letter and requested that Respondent submit a written response to each violation cited in the inspection report by April 9, 2020.

17. On April 20, 2020, Respondent submitted a response to the inspections performed on November 20, 2019, and December 31, 2019. The response stated the following:

- a) The unpermitted discharge from the pipe in the levee at the southeastern corner of Cell 1 of the treatment system has ceased, and the pipe has been sealed.
- b) Electricity to the pump station has been restored.
- c) The levees have been repaired and the vegetation has been removed.

### **ORDER AND AGREEMENT**

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall sample the effluent in accordance with Part I, Section A of the Permit and report the results of the sampled effluent in accordance with Part III, Section C, Condition 5 of the Permit.

2. 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 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 Paragraphs 10, 11, and 14 that have not been addressed, and to bring the treatment plant into compliance with permit requirements. The CAP shall include a reasonable milestone schedule with a date of final compliance no later than December 31, 2021. Upon review and approval by DEQ, Respondent shall comply with the terms, milestone schedule, and final compliance date contained the approved CAP. The milestone schedule and final compliance date shall be fully enforceable as terms of this Order.

3. 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 bringing the facility into compliance with the Permit. Respondent shall submit the final compliance report by December 31, 2021.

4. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Four Thousand Seven Hundred Dollars (\$4700.00) of which Three Thousand Seven Hundred Dollars (\$3700.00) shall be conditionally SUSPENDED by DEQ. If Respondent fully complies with this Order, the suspended civil penalty of Three Thousand Seven Hundred Dollars (\$3700.00) shall be DISMISSED by DEQ. Payment of One

Thousand Dollars (\$1000.00) 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:

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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.



10. 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.

11. 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.

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

13. 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 11 DAY OF January, <sup>2021</sup>~~2020~~.

Becky W. Keogh  
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

City of Earle

BY: Sherman Smith Sr.  
(Signature)

Sherman Smith Sr.  
(Typed or printed name)

TITLE: Mayor

BY: Cynthia Conner  
(Signature)

Cynthia Conner  
(Typed or printed names)

TITLE: City Clerk-Treasurer

Dated: 8/25/2020

City of Earle, CAO

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**Earle City Council Special Meeting  
August 25, 2020  
Page 1 of 3**

**The Regular meeting of the Earle City Council was held at the Earle City Hall Annex Building. Mayor Sherman Smith, Sr. called the meeting to order. Council members present on roll call: (Robert Malone, Tyneshia Bohanon, Charlie Young, Robert Udell and Sandy Holloway.) Councilmembers Absent: Jimmie Barham, Donnie Cheers and Tyrome Hurst. Quorum declared by Mayor Sherman Smith, Sr.; Councilman Robert Malone led prayer.**

**The City Council extended a cordial welcome to all visitors. A signed guest book records the visitors of this meeting. City Attorney Davis Loftin was present.**

**Mayor Sherman Smith, Sr. stated the Earle City Council needed to make a Proposed Consent Administrative Order and Resolution due to findings that have since been corrected by the Earle Water Department. He stated this Resolution would acknowledge receipt of the Consent order, and that City plan to comply with the order. In Lieu of having to pay a costly fine, DEQ will allow the Water Department to send in copies of invoices and receipts to show they have corrected the noncompliance findings.**

**City Attorney, Davis Loftin read a RESOLUTION OF THE CITY COUNCIL OF EARLE, ARKANSAS APPROVING A CONSENT ADMINISTRATIVE ORDER WITH THE ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT, DEPARTMENT OF ENVIRONMENTAL QUALITY AND AUTHORIZING THE MAYOR AND CITY CLERK TO SIGN THE CONSENT ADMINISTRATIVE ORDER ON BEHALF OF THE CITY OF EARLE.**

**Councilwoman Tyneshia Bohanon inquired about the number of findings for the Water Department. City Attorney, Davis Loftin read the findings. Mayor Sherman Smith, Sr. stated the Water Manager Waste Water license had expired, but was now renewed.**

**Motion given by Councilwoman Sandy Holloway to approve RESOLUTION OF THE CITY COUNCIL OF EARLE, ARKANSAS APPROVING A CONSENT ADMINISTRATIVE ORDER WITH THE ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT, DEPARTMENT OF ENVIRONMENTAL QUALITY AND AUTHORIZING THE MAYOR AND CITY CLERK TO SIGN THE CONSENT ADMINISTRATIVE ORDER ON BEHALF OF THE CITY OF EARLE, seconded by Councilman Robert Udell. Motion carried with a unanimous vote (5/0).**

**Earle City Council Special Meeting  
August 25, 2020  
Page 2 of 3**

**Mayor Sherman Smith, Sr. informed the Earle City Council that there had been an electrical outage at the Earle City Hall. He stated someone had hit the electrical pole on Sunday, August 23, 2020. Mayor Smith, Sr. stated the Earle Fire Department received the most damage to their equipment. The estimate at this time is around \$60,000.00. He stated he has given Fire Chief, Jason Peninger the permission to go ahead and purchase a motor at the cost of \$1200.00 for the door that opens for the fire trucks to go on calls.**

**Councilwoman Tyneshia Bohanon wanted to know who had hit the pole and shouldn't they be responsible for the damage to the Earle City Hall building. He stated the person should be responsible and he would make sure the City of Earle makes contact with Mr. Brown. Councilman Udell wanted to know if anyone took a report. City Clerk-Treasurer, Cynthia Conner stated the Crittenden Sheriff Office took the report.**

**Mayor Sherman Smith, Sr. informed the Earle City Council that the City of Earle and Comcast had been approved for the Arkansas Rural Connect Grant in the amount of \$1,807,002.00 million dollars.**

**Motion was given by Councilwoman Sandy Holloway to give Mayor Sherman Smith, Sr. and City Clerk-Treasurer, Cynthia Conner permission to transfer \$100 from General Fund account 2022559 to setup account Arkansas Rural Connect Grant Fund, and sign W-9 forms seconded by, Councilman Robert Udell. Motion carried with a unanimous vote (5/0).**

**Mayor Sherman Smith, Sr. informed the Earle City Council that Mr. Johnny Grice wants to bring in a tiny house. Mayor Smith, Sr. stated that it is 432 square foot. He stated it is big enough to do what is needed to comply with City Code Inspector guidelines. Mayor Smith, Sr. stated there is a tag on the building.**

**Councilwoman Tyneshia Bohanon asked if we had done the ordinance. Mayor Smith, Sr. stated, no. Councilwoman Bohanon stated the City of Earle should have an ordinance in place first. Councilwoman Sandy Holloway agreed that the City of Earle should have an ordinance in place before anyone is allowed to bring in any Tiny House.**

**Motion given by Councilman Robert Udell to table Tiny House until next City Council meeting, seconded by Councilwoman Tyneshia Bohanon. Motion carried with a unanimous vote (5/0).**

**Earle City Council Special Meeting  
August 25, 2020  
Page 3 of 3**

**Motion was given by Councilwoman Sandy Holloway to add Councilman Robert Malone, Mayor Sherman Smith, Sr. and City Clerk-Treasurer, Cynthia Conner as signees on the Arkansas Rural Connect Grant Fund, seconded by Councilman Charlie Young. Motion carried with a unanimous vote (5/0).**

**Motion was given by Councilman Robert Malone for meeting to be adjourned, seconded by Councilman Charlie Young. Motion carried with a unanimous vote (5/0). Time: 7:48 PM.**

**Date Approved:** 8/25/2020

  
**Mayor Sherman Smith Sr.**

  
**City Clerk-Treasurer Cynthia Conner**

**A RESOLUTION OF THE CITY COUNCIL OF EARLE, ARKANSAS  
APPROVING A CONSENT ADMINISTRATIVE ORDER WITH THE  
ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT,  
DEPARTMENT OF ENVIRONMENTAL QUALITY AND AUTHORIZING THE  
MAYOR AND CITY CLERK TO SIGN THE CONSENT ADMINISTRATIVE  
ORDER ON BEHALF OF THE CITY OF EARLE**

WHEREAS, the Arkansas Department of Energy and Environment, Division of Environmental Quality (DEQ) conducted a Reconnaissance Inspection of the Earle wastewater treatment facility on November 20, 2019 and found violations of the permit issued to the City of Earle for the operation of the facility by DEQ on November 10, 2015; and

WHEREAS, the City of Earle responded to the findings of violations on April 20, 2020 addressing the actions taken by the City to correct the violations; and

WHEREAS, the DEQ has proposed a Consent Administrative Order to resolve the issues between DEQ and the City of Earle which the Earle City Council wishes to agree to.

NOW THEREFORE be it resolved by the Earle City Council:


1. That the City Council of Earle, Arkansas, at a duly convened city council meeting and after reviewing the Consent Administrative Order prepared by DEQ, hereby approves the Order.
2. That the Mayor and City Clerk are hereby authorized to sign the Consent Administrative Order, prepared by DEQ, on behalf of the City of Earle and to pay any civil penalty as stated in the Order

8/25/2020

PASSED:

  
Sherman Smith, Mayor

ATTEST:

  
Cynthia Conner, City Clerk



City of Earle  
Earle Water Company  
1014 Second Street  
Earle, AR 72331  
870-792-8777

August 27, 2020

Arkansas Energy and Environment  
5301 Northshore Drive  
North Little Rock, AR 72118  
Attn: Layne Pemberton

RE: NPDES Permit Number AR0034304, AFIN 18-00107  
Proposed Consent Administrative Order

Dear Mr Pemberton:

We are responding to your letter dated August 4, 2020 regarding the violations of the Arkansas Water and Air Pollution Control Act, Ark. Code 8-4-201 at our sewer treatment plant in Earle, Arkansas.

All the violations in your letter have been corrected except for the following: Chlorine disinfection not operational, and the injectors were not connected to chlorine bottles.

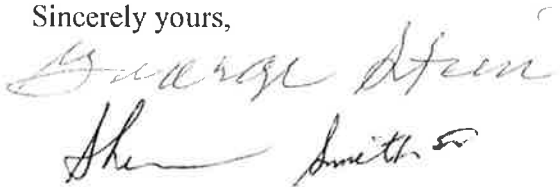
Regarding the Chlorine disinfection: this is part of a rehab project that the City of Earle has requested funding for and when the funds are made available the Chlorine disinfection violation will be corrected.

The Earle Water Company has already spent approximately \$15,700 making the corrections to the violations in your letter, and we still have approximately \$15,000 remaining to be paid. We have enclosed copies of invoices of the work that has been completed.

Since the water company has limited funds, we are requesting that the penalty be reduced to \$1,000 so that we can have funds to complete the work that still needs to be done.

We appreciate your consideration in the matter.

Sincerely yours,

The image shows two handwritten signatures in cursive. The top signature is for George Stein and the bottom signature is for Sherman Smith. Both signatures are written in dark ink.

Mayor: Sherman Smith  
Water Commissioner: George Stein