

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Tuckerman
P.O. Box 1117
Tuckerman, AR 72473

LIS No. 21- **062**
Permit No. AR0020001
AFIN 34-00059

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 Tuckerman (Respondent) and the Division of Environmental Quality¹ (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 on Allen Street, approximately one (1) mile East of U.S. Highway 67, Tuckerman, Jackson County, Arkansas.
2. Respondent discharges treated wastewater to Tuckerman Ditch, thence to Village Creek, thence to the White River in Segment 4C of the White 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), (4) 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].

(4) Knowingly to make any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter.

7. Ark. Code Ann. § 8-4-217(b)(1) provides:

(1) It shall be unlawful for any person to engage in any of the following acts without having first obtained a written permit from the division:

...

(E) To discharge sewage, industrial waste, or other wastes into any of the waters of this state.

8. 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.
9. 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.”
10. DEQ issued NPDES Permit Number AR0020001 (“Permit”) to Respondent on June 6, 2016. The Permit became effective on July 1, 2016, and expires on June 30, 2021.
11. DEQ issued State Construction Permit AR0020001C (“Construction Permit”) to Respondent on February 29, 2016. The Permit became effective on March 1, 2016.
12. On November 30, 2017, DEQ notified Respondent via letter of deficient and missing Discharge Monitoring Reports (DMRs).
13. On June 4, 2019, DEQ notified Respondent via email that the DMR for the monitoring period ending April 30, 2019, had not been submitted.
14. On June 27, 2019, DEQ sent Respondent an email requesting the submission of an update to the Corrective Action Plan (CAP) dated May 19, 2015, to address continuing effluent violations.
15. On July 17, 2019, Respondent submitted an updated CAP and milestone schedule and stated that all corrective actions were complete.
16. On September 25, 2019, Respondent submitted a notice of completion of construction, stamped by a professional engineer.
17. On October 15, 2019, DEQ notified respondent that the Construction Permit had been terminated.

18. On October 21, 2019, DEQ received an anonymous complaint that a manhole was overflowing at 101 Gracelawn Drive. The complainant stated that this is a repeat occurrence.

19. On October 30, 2019, Respondent submitted an email to DEQ with an update regarding the facility. In this email, Respondent stated its belief that the issues had been corrected and the facility was now able to produce effluent that complies with the discharge limitations set forth in the Permit.

20. On November 4, 2019, DEQ sent Respondent a letter requesting a CAP be submitted to address the Sanitary Sewer Overflow (SSO) complaint DEQ received on October 21, 2019. DEQ also requested that Respondent submit the employment contract for the operator.

21. On November 7, 2019, Respondent submitted the employment contract for the operator to DEQ.

22. On November 18, 2019, Respondent notified DEQ that the SSO issues at 101 Gracelawn Drive were being corrected by replacing the line. DEQ notified Respondent that the CAP would still be required if the repairs did not correct the ongoing issues.

23. On November 20, 2019, Respondent notified DEQ that the line replacement was completed and there was no evidence of overflows.

24. On July 29, 2020, DEQ conducted a Reconnaissance Inspection of the facility and documented the following violations:

- a. High vegetation was present around all lagoon levees. This condition is a violation of Part III, Section B, Condition 1.A of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
- b. Rock Reed Filters were still in place. According to the Construction Permit (AR0020001C), the filters were to be removed. Respondent submitted a

construction termination form on September 25, 2019 certifying that the construction was completed in accordance with the approved plans and specifications. Knowingly making a false certification to DEQ is a violation of Ark. Code Ann. § 8-4-217(a)(4).

25. On October 22, 2020, DEQ notified Respondent of the inspection results via letter and requested a written response addressing the violations be submitted to DEQ by November 5, 2020.

26. On November 3, 2020, Respondent submitted a response to the July 29, 2020 inspection.

27. On January 15, 2021, DEQ notified Respondent via letter that the inspection response submitted on November 3, 2020, did not sufficiently address the violations documented in the inspection report. DEQ requested written documentation explaining why the rock reed filters were not removed in accordance with Condition 10 of the Construction Permit and a timeline for completing the removal of the rock reed filters. DEQ also requested that Respondent submit flow measurements from January 2019 to September 2020.

28. On February 3, 2021, Respondent submitted an explanation of why the rock reed filters were not removed and requested to leave the filters in place and maintain the filters in their present condition.

29. On February 3, 2021, DEQ conducted a review of certified DMRs submitted by Respondent in accordance with the Permit.

30. 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 January 1, 2018, through January 31, 2021:

- a. Twenty-one (21) violations of Total Suspended Solids; and

b. Seven (7) violations of Carbonaceous Biochemical Oxygen Demand.

31. Each of the twenty-eight (28) discharge limitation violations listed in Paragraph 30 above constitutes a separate permit violation for a total of twenty-eight (28) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

32. The review of the DMRs also revealed that Respondent failed to conduct analyses for the monitoring period end dates of February 28, 2018; March 31, 2018; and November 30, 2020. Failure to conduct monthly analyses for those periods is a violation of Part I, Section A of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

33. The review further revealed that Respondent reported twelve (12) violations of discharge flow as percentage of receiving stream flow in violation of Part II, Condition 9 of the Permit and therefore in violation of Ark. Code Ann. § 8-4-217(a)(3).

34. DEQ conducted a review of the SSOs and treatment bypasses reported by Respondent in accordance with the Permit for the period of September 1, 2017, through January 31, 2021. The review revealed the following:

a. Respondent reported six (6) SSOs. 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 SSO is a violation of Part II, Condition 5 of the Permit and Ark. Code Ann. § 8-4-217(b)(1)(E) and therefore is 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 to DEQ, for review and approval, a closure plan to remove the rock reed filters with a final closure date no later than

July 31, 2022. Within ten (10) calendar days of completion of the rock reed filter removal, Respondent shall submit to DEQ documentation, including photos and any waste disposal tickets, that closure of the rock reed filters is complete in accordance with the approved closure plan and a certification letter, stamped and signed by a Professional Engineer licensed in the state of Arkansas and signed by the Responsible Official, certifying that the rock reed filters have been closed.

2. Within thirty (30) calendar days of the effective date of this Order, Respondent shall submit to DEQ, for review and approval, a 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 31, 32, 33, 34 and prevent future violations. The CAP shall also include a reasonable milestone schedule. 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 compliance with the final permitted effluent limits as set forth in Part I, Section A of the Permit.

4. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Seven Thousand Dollars (\$7000.00), of which Six Thousand Dollars (\$6000.00) shall be conditionally SUSPENDED by DEQ. If Respondent fully complies with this Order, the suspended civil penalty of Six Thousand Dollars (\$6000.00) 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 Seven Thousand Dollars (\$7000.00) shall become due and payable immediately to DEQ. Payment of the civil penalty in the amount 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 24 DAY OF ~~October~~ June, 2021.

Becky W. Keogh
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

City of Tuckerman

BY: Rick Womach
(Signature)

Rick Womach
(Typed or printed name)

TITLE: Mayor

DATE: 6-14-21

RESOLUTION NO 2021-009

A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF TUCKERMAN TO EXECUTE DOCUMENTS WITH ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY; AND FOR OTHER PURPOSES.

WHEREAS, the Arkansas Department of Environmental Quality (hereinafter "ADEQ") and the City of Tuckerman have agreed to a second amendment to executed Consent Administrative Order (hereinafter "CAO") regarding compliance with alleged violations of environmental regulations, and

WHEREAS, the City of Tuckerman and ADEQ have reached an agreement on the terms and conditions to enter into an amendment to a CAO directing certain actions be completed by the City in certain periods of time; and

WHEREAS, the ADEQ and the City of Tuckerman entered into CAO LIS 21 on June 14, 2020. Pursuant to that CAO, the City of Tuckerman agreed to achieve compliance with all permitted effluent limitations no later than July 31, 2022.

WHEREAS, the City Council of the City of Tuckerman finds that addressing these issues through the CAO is appropriate and necessary to protect the City from liability, additional enforcement actions either by other governmental agencies or citizens and is in the best interest of the financial goals of the city and promotes the health and safety of the citizens of Tuckerman; and


WHEREAS the City Council of the City of Tuckerman hereby authorizes the Mayor of Tuckerman, Rick Womack, to execute such documents as are necessary to complete the CAO and expend the funds authorized herein.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF Tuckerman, ARKANSAS THAT:

Section 1. The City of Tuckerman Mayor is hereby authorized and directed to execute all appropriate agreements, documents, and contracts necessary under the CAO and

Agreement with the ADEQ.

Approved this 14th day of June 2020 by a vote of 5
years and 0 nays.



Rick Womack, Mayor

Attest;



Vickie Adams, City Clerk