

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Norphlet
P.O. Box 23
Norphlet, AR 71759

LIS No. 22- **047**
Permit No. AR0035653
AFIN 70-00115

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 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 Norphlet (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 plant (“facility”) located on McMillian Street, Norphlet, Union 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. Respondent discharges treated wastewater through Outfall 001 to an unnamed tributary of Flat Creek, thence into Flat Creek, thence into Haynes Creek, thence into Smackover Creek, thence into the Ouachita River in Segment 2D of the Ouachita River Basin. Respondent is also authorized to discharge through Outfall 002 to Smackover Creek, thence into the Ouachita River in Segment 2D of the Ouachita River Basin.

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. DEQ issued NPDES Permit Number AR0035653 (“Permit”) to Respondent on December 31, 2010. The Permit became effective on January 11, 2011, and expired on December 31, 2015. Respondent submitted a timely renewal application on June 2, 2014, that was administratively complete. Pursuant to APC&EC Rule 6.201, Respondent’s Permit continued in effect pending the issuance of a new permit. DEQ issued the renewal Permit to Respondent on November 8, 2017. The Permit became effective on December 1, 2017, and expires on November 30, 2022.
10. On January 28, 2016, DEQ and Respondent executed Consent Administrative Order LIS 16-012 (CAO LIS 16-012), with an effective date of March 11, 2016. CAO LIS 16-012 addressed Respondent’s repeated effluent violations.
11. On June 8, 2017, DEQ requested a progress report detailing the status of the wastewater wetland reconstruction.
12. On July 19, 2017, December 14, 2017, April 10, 2018, November 15, 2018, and February 7, 2019, Respondent submitted progress reports detailing the progress being made towards final compliance with the permitted effluent limitations.
13. On March 8, 2019, Respondent submitted a request to DEQ to extend the final compliance date in the Corrective Action Plan (CAP) by sixty (60) days to give Respondent time to consider how the results of a study to modify the Total Maximum Daily Load (TMDL) for minerals on Haynes Creek might affect its Permit limits.
14. On March 10, 2019, Respondent submitted a progress report detailing the Best Management Practices (BMPs) for Chlorides, Sulfates, and Total Dissolved Solids (TDS).
15. On April 24, 2019, Respondent notified DEQ that the sewer discharge project had been placed on hold for ninety (90) days to wait on a decision regarding the study to modify the TMDL on Haynes Creek.

16. On June 5, 2019, DEQ conducted a routine compliance evaluation inspection and a sanitary sewer overflow/collection system inspection of the facility. During the inspection, DEQ documented the following violations:

- a. There were no influent samples analyzed for Carbonaceous Biochemical Oxygen Demand (CBOD5) and Total Suspended Solids (TSS) in the past three (3) years of records; therefore, an 85% removal was unable to be calculated. Failure to sample the influent and determine the removal rate of CBOD5 and TSS 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).
- b. At the time of inspection, the chlorinator and aerator were not in operation. Failure to maintain the facility properly 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).
- c. There were no analyses performed on Total Residual Chlorine (TRC) for December 2017 and January 2018. There were no noncompliance reports submitted to DEQ to address the failure to sample. Failure to analyze TRC and subsequent failure to submit a noncompliance report is a violation of Part I, Section A of the Permit and Part III, Section D, Condition 7 of the Permit, respectively, and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

17. On July 16, 2019, DEQ notified Respondent of the inspection results via letter and requested a written response be submitted by July 30, 2019.

18. On July 22, 2019, DEQ requested to meet with Respondent.

19. On July 31, 2019, DEQ received Respondent's response to the violations documented in the July 16, 2019 inspection report.

20. On July 31, 2019, DEQ and Respondent met to discuss the pipeline, facility rehabilitation, and repeated effluent violations.

21. On August 5, 2019, DEQ sent a letter to Respondent requesting Respondent to submit the following information:

- a. Complete a Professional Engineer (P.E.) assessment and review of the facility;
- b. A P.E. certified and stamped CAP detailing the condition of the facility, milestones to correct the identified deficiencies and achieve compliance with the Permit, and a request to amend CAO LIS 16-012 with a revised milestone schedule and final compliance date;
- c. A plan for the operator to obtain a Class II wastewater operator license;
- d. The past due Total Residual Chlorine (TRC) progress report; and
- e. A response to the inspection performed on June 5, 2019.

DEQ also requested that Respondent coordinate with the DEQ Permit Branch prior to any modification to the facility.

22. On August 30, 2019, Respondent submitted a proposed CAP and a request to amend CAO LIS 16-012.

23. On October 29, 2019, DEQ notified Respondent via letter the inspection response dated July 31, 2019, sufficiently addressed the violations found in the June 5, 2019, inspection.

24. On November 7, 2019, Respondent submitted an updated progress report.

25. On March 3, 2020, DEQ notified Respondent the 2019 annual report for Chlorides and Sulfates, required by Part I, Section B, Condition 2 of the Permit, had not been received.

26. On March 4 2020, Respondent submitted the 2019 annual report for Chlorides and Sulfates.
27. On March 10, 2020, DEQ notified Respondent via letter that the TRC BMP plan in the 2019 annual report dated March 4, 2020, was deemed adequate. DEQ notified Respondent that the 2019 annual report does not resolve the compliance issues of the facility and does not fulfill the requirements set forth in Part 1, Section B, Condition 2 of the Permit. DEQ also notified Respondent that the revised CAP was deemed adequate, and requested that Respondent submit a request to amend CAO LIS 16-012 and an updated milestone schedule.
28. On May 12, 2020, Respondent submitted a request to amend CAO LIS 16-012.
29. On May 12, 2021, DEQ and Respondent met via Zoom to discuss the continuous effluent violations and current TMDL situation.
30. On May 26, 2021, DEQ conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.
31. 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 September 1, 2016 through July 31, 2021:
 - a. Thirty (30) violations of Chloride;
 - b. Fifteen (15) violations of Total Suspended Solids;
 - c. Fifteen (15) violations of Ammonia Nitrogen; and
 - d. Eight (8) violations of Fecal Coliform Bacteria.
32. Each of the sixty-eight (68) discharge limitation violations listed in Paragraph 31 above constitutes a separate permit violation for a total of sixty-eight (68) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

33. On March 29, 2022, DEQ requested to meet with Respondent.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Upon the effective date of this Order, CAO LIS 16-012 shall be closed.
2. Within thirty (30) calendar days of the effective date of this Order, Respondent shall submit to DEQ, for review and approval, a Revised CAP developed by a P.E. licensed in the state of Arkansas. The Revised CAP shall include at minimum the methods and best available technologies that will be used to correct the violations listed in Findings of Fact and prevent future violations and include a reasonable milestone schedule with a date of final compliance. Upon review and approval by DEQ, Respondent shall comply with the terms, milestone schedule, and final compliance date contained in the approved Revised 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 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 Five Thousand Six Hundred Dollars (\$5600.00), of which Five Thousand Six Hundred Dollars (\$5600.00) shall be conditionally SUSPENDED by DEQ. If Respondent fully complies with this Order, the suspended civil penalty of Five Thousand Six Hundred Dollars (\$5600.00) shall be DISMISSED by DEQ. The suspension and subsequent 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 Five Thousand

Six Hundred Dollars (\$5600.00) shall be payable to DEQ on demand. 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 26th DAY OF April, 2022.



JULIE LINCK, CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

City of Norphlet

BY: 

(Signature)

JIM CROTTY

(Typed or printed name)

TITLE: Mayor

DATE: 4-11-2022

RESOLUTION NO. 2022-02

A RESOLUTION AUTHORIZING THE CITY OF NORPHLET TO ENTER INTO A CONSENT ADMINISTRATIVE ORDER WITH THE ARKANSAS DEPARTMENT OF ENERGY & ENVIRONMENT, DIVISION OF ENVIRONMENTAL QUALITY (DEQ).

WHEREAS, it is in the City's best interest to enter into an agreement with DEQ and resolve the violations of the Arkansas Water and Air Pollution Control Act listed in the proposed Consent Administrative Order.

WHEREAS, the Mayor and Public Works Director or other designated person, working with a Professional Engineer, have developed a plan of action to address the issues listed in the proposed Consent Administrative Order.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORPHLET:

1. The proposed Consent Administrative Order has been reviewed and approved by the City Council in a duly convened meeting with a quorum present.
2. The City Council of the City of Norphlet authorizes the Mayor to sign the proposed Consent Administrative Order.
3. The City Council of the City of Norphlet authorizes the Mayor and treasurer to expend funds for compliance activities required by the proposed Consent Administrative Order including but not limited to the payment of a civil penalty as set forth in the proposed Consent Administrative Order.

Adopted on this 11th day of April 2022.

APPROVED:


Jim Crotty, Mayor


Nancy Steele, City Clerk