

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Rector
409 South Stewart Street
Rector, AR 72461

LIS No. 22- 062
Permit No. AR0021911
AFIN 11-00057

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 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 Rector (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 at 1299 South Main Street, Rector, Clay County, Arkansas.
2. Respondent discharges treated wastewater to an unnamed tributary, thence to Post Oak Creek, thence to Big Slough, thence to the St. Francis River in Segment 5A of the St. Francis 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. DEQ issued NPDES Permit Number AR0021911 (“Permit”) to Respondent on September 29, 2016, with an effective date of October 1, 2016, and an expiration date of September 30, 2021. DEQ issued a minor modification on October 19, 2016, with an expiration date of September 30, 2021.

On November 23, 2021, Respondent and DEQ entered into Consent Administrative Order LIS 21-122 to continue Respondent's permit coverage until DEQ issued the renewal permit because Respondent did not submit a timely administratively complete permit renewal application as required by the Permit.

10. On January 8, 2020, DEQ conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.

11. 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 February 28, 2017, through September 30, 2019:

- a. Seven (7) violations of Total Suspended Solids;
- b. Seven (7) violations of Carbonaceous Biochemical Oxygen Demand;
- c. Twelve (12) violations of Ammonia Nitrogen; and
- d. One (1) violation of Dissolved Oxygen.

12. Each of the twenty-seven (27) discharge limitation violations listed above constitutes a separate permit violation for a total of twenty-seven (27) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

13. On January 8, 2020, DEQ notified Respondent by mail of the above-listed violations and requested a Corrective Action Plan (CAP) be submitted to address the violations. The CAP was to have a milestone schedule, a final date of compliance, and be certified by a Professional Engineer (P.E.) license in the state of Arkansas.

14. On February 7, 2020, Respondent submitted a CAP to DEQ with a final compliance date of February 28, 2022.

15. On February 12, 2020, DEQ notified Respondent by letter that the CAP was reviewed and determined to be adequate. DEQ requested that Respondent submit quarterly progress reports with the first report due on March 15, 2020.

16. On July 16, 2021, Respondent submitted a Revised CAP (RCAP) with a final compliance date of September 30, 2023.

17. On July 26, 2021, DEQ notified Respondent by letter that the RCAP was reviewed and determined to be adequate. DEQ requested that Respondent submit quarterly progress reports with the first report due on October 15, 2021.

18. To date, Respondent has not submitted any quarterly progress reports for the CAP or RCAP.

19. On November 23, 2021, Respondent and DEQ entered into Consent Administrative Order LIS 21-122 to continue Respondent's permit coverage until DEQ issued the renewal permit because Respondent did not submit a timely administratively complete permit renewal application as required by the Permit.

19. On February 28, 2022, DEQ conducted a follow-up review of certified DMRs submitted by Respondent in accordance with the Permit.

20. 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 October 1, 2019, through January 31, 2022:

- a. Twenty-One (21) violations of Carbonaceous Biochemical Oxygen Demand;
- b. One (1) violation for Fecal Coliform Bacteria;
- c. Seven (7) violation for Ammonia Nitrogen;
- d. Sixteen (16) violations for Dissolved Oxygen;

e. One (1) violation for pH; and

f. Twenty-Five (25) violations for Total Suspended Solids.

21. Each of the seventy-one (71) discharge limitation violations listed above constitutes a separate permit violation for a total of seventy-one (71) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

22. On April 11, 2022, Respondent submitted a Revised CAP (RCAP) with a final compliance date of July 31, 2025.

23. On April 20, 2021, DEQ notified Respondent by letter that the RCAP was reviewed and determined to be adequate.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall comply with the Revised Corrective Action Plan (RCAP) submitted on April 11, 2022. Respondent shall comply will all permitted effluent limits no later than the final compliance date of July 31, 2025.

2. Within sixty (60) calendar days of the effective date of this Order, Respondent shall submit an interim operating plan that describes, in detail, the operational measures that will be undertaken to maximize the removal efficiency of all pollutants covered by this Permit consistently.

3. Within ninety (90) calendar days of the effective date of this Order, Respondent shall submit to DEQ a copy of the Operations and Maintenance (O&M) Manual for the operator's use in the operation of Respondent's wastewater treatment system.

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 as set forth in Part I, Section A of the Permit. Respondent shall submit the final compliance report by July 31, 2025.

5. 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 Three Thousand Six Hundred Dollars (\$3600.00) shall be conditionally SUSPENDED by DEQ. The allowance of a conditional suspension is based upon DEQ's primary goal of regulatory compliance and Respondent's current efforts to obtain compliance. If Respondent fully complies with this Order, the suspended civil penalty of Three Thousand Six Hundred Dollars (\$3600.00) 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 Five Thousand Six Hundred Dollars (\$5600.00) shall be payable immediately to DEQ. Payment of the penalty in the amount of Two Thousand Dollars (\$2000.00) 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.

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 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.

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 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.

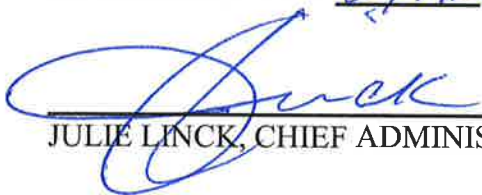
11. Nothing in this Order shall be construed as a waiver by DEQ of its enforcement authority over alleged violations not specifically addressed herein. Also, this Order does not exonerate Respondent from any past, present, or future conduct that is not expressly addressed herein, nor does it relieve Respondent of its responsibilities for obtaining any necessary permits.

12. 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.

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

14. 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~~th~~ DAY OF May, 2022.



JULIE LINCK, CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

City of Rector

BY: Teresa L. Rafe / Shelia Dale
(Signature)

Teresa L. Rafe / Shelia Dale
(Typed or printed name)

TITLE: Mayor / Personnel - Treasurer

DATE: 04/19/22

RESOLUTION NO. 2022-4

A RESOLUTION AUTHORIZING THE CITY OF RECTOR TO ENTER INTO A CONSENT ADMINISTRATIVE ORDER WITH THE DIVISION OF ENVIRONMENTAL QUALITY, AND FOR OTHER PURPOSES.

WHEREAS, the City of Rector, upon review of a Consent Administrative Order and the rules by the Arkansas Pollution Control and Ecology Commission and review of plans for the municipal wastewater treatment facility in the City of Rector; and

WHEREAS, in anticipation of various discharge reports and presenting a corrective action plan approved by the State of Arkansas, and

WHEREAS, the City of Rector has reached an agreement to implement the Corrective Action Plan, as proposed by DEQ.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RECTOR, ARKANSAS, AS FOLLOWS:

SECTION 1. That the City Council of the City of Rector do hereby agree to enter into an agreement the DEQ and authorize the Mayor and the City Clerk to expend funds for compliance activities and authorized the Mayor and City Clerk to sign the Correction Action Plan.

PASSED AND APPROVED this 2nd day of May, 2022.

CITY OF RECTOR, ARKANSAS

By: Jeressa L. Poff
Mayor

ATTEST:

Antelia Dale
City Clerk