

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Landers BCO, LLC
d/b/a Crossroads Village
219 West South Street
Benton, AR 72015

LIS No. 24- 099
Permit No. AR0050563
AFIN 63-00801

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 Landers BCO, LLC dba Crossroads Village (Respondent) and the Division of Environmental Quality (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 minor industrial domestic wastewater treatment facility ("facility") located at 3970 Hampton Drive, Benton, Saline County, Arkansas.
2. Respondent discharges treated wastewater to an unnamed tributary, thence to Clift Creek, thence to the Saline River, thence to the Ouachita River in Segment 2C 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 AR0050563 (“Permit”) to Respondent on July 27, 2017, with an effective date of August 1, 2017, and an expiration date of August 31, 2022. The Permit was administratively continued pursuant to APC&EC Rule 6.201 until DEQ issued the renewal Permit on October 27, 2023, with an effective date of November 1, 2023, and an expiration date of October 31, 2028.

Inspection Violations

10. On February 8, 2022, DEQ conducted a compliance evaluation inspection of the facility.

The inspection revealed the following violations:

- a. Conditions demonstrating Respondent's failure to operate and maintain the facility adequately in violation of Part III, Section B, Condition 1 of the Permit and therefore in violation of Ark. Code Ann. § 8-4-217(a)(3).
 - i. The equalization basin was not functioning properly;
 - ii. The clarifier contained significant amounts of sludge and solids;
 - iii. The clarifier weirs were in need of cleaning;
 - iv. The walkway of the aeration basin is missing grates; and
 - v. The structure of the plant, including the splitter box, were showing signs of corrosion.
- b. Flow was not being measured at the discharge point in violation of Part I, Section A of the Permit and therefore in violation of Ark. Code Ann. § 8-4-217(a)(3).
- c. Total Residual Chlorine (TRC) was not being sampled and reported as required by Part I, Section A of the Permit. Failure to sample and report the results for the parameters listed in Part I, Section A of the Permit 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).

11. On June 15, 2022, DEQ notified Respondent of the inspection results and requested a written response to the inspection be submitted by June 30, 2022.

12. On July 6, 2022, DEQ received Respondent's response to the violations cited in the February 8, 2022 inspection report.

13. On January 5, 2023, DEQ notified Respondent that the response to the inspection was not adequate and requested additional documentation be submitted by January 19, 2023.

14. On January 18, 2023, DEQ received Respondent's response to the violations cited in the inspection report. The response stated that Respondent was working to complete corrective actions for the violations, and that a timeline for scheduled repairs would be submitted by February 17, 2023. To date, Respondent has not submitted the follow-up response and timeline for repairs.

DMR Violations

15. On May 9, 2024, DEQ conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.

16. 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, 2020, through March 31, 2024:

- a. Nine (9) violations of Carbonaceous Biochemical Oxygen Demand;
- b. Seven (7) violations of Fecal Coliform Bacteria;
- c. Three (3) violations of Total Suspended Solids (TSS); and
- d. One (1) violation of Ammonia Nitrogen.

17. Each of the twenty (20) discharge limitation violations listed in Paragraph 16 above constitutes a separate permit violation for a total of twenty (20) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

18. The review of the DMRs revealed that Respondent failed to submit a Non-Compliance Report (NCR) for each effluent violation reported during the monitoring period ending September 30, 2022. Failure to submit an NCR for each effluent violation is a violation of Part III, Section D, Condition 7 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

19. The review of the DMRs further revealed that Respondent failed to submit DMRs by the due date for the following three (3) monitoring periods:

- a. 2020: October;
- b. 2021: August; and
- c. 2022: September.

Failure to submit DMRs with the monitoring results obtained during the monitoring period no later than the 25th of the month following the completed monitoring period is a violation of Part III, Section C, Condition 5 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

20. The review of the DMRs also revealed that Respondent failed to conduct analysis for the monitoring periods ending March 31, 2022, and May 31, 2023. Failure to monitor the effluent in accordance with the requirements set forth in Part I, Section A of the Permit 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).

21. On January 24, 2024, Respondent notified DEQ that the DMR Report for December 2023 will be late because of technical issues.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. 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, an assessment of the feasibility of connecting to the City of Benton's sanitary sewer and the methods and best available technologies that will be used to correct the violations listed in Findings of Fact and prevent future violations. The CAP shall also include a reasonable milestone schedule with a date of final compliance no later than December 31, 2025. Upon review and approval by DEQ,

Respondent shall comply with the terms, milestone schedule, and final compliance date contained in the approved CAP. The milestone schedule and final compliance date shall be fully enforceable as terms of this Order.

2. 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 permitted effluent limits set forth in Part I, Section A of the Permit. Respondent shall submit a final compliance report that includes a certification of compliance within thirty (30) calendar days of the final compliance date in the approved CAP or by December 31, 2025, whichever occurs first.

3. On or before the effective date of this Order, Respondent shall submit a written response detailing the corrective actions implemented to address the violations cited in the February 8, 2022 compliance inspection report, including documentation that all corrective actions have been completed. If all violations have not been corrected, plans for corrective actions shall be included in the CAP and milestone schedule required by Paragraph 1 above.

4. Respondent shall submit all DMRs in accordance with Part III, Section C, Condition 5 of the Permit.

5. On or before the effective date of this Order, Respondent shall submit to DEQ complete NCRs detailing each effluent limit violation and the actions taken to address the effluent limit violations that occurred for the monitoring period ending September 30, 2022. Respondent shall submit the NCR to the Enforcement Branch of the DEQ Office of Water Quality via email at water-enforcement-report@adeq.state.ar.us.

6. On or before the effective date of this Order, Respondent shall submit any NCRs that were previously completed but not submitted to DEQ, for any of the monitoring periods listed in paragraph 18 above. If Respondent has not previously completed a NCR for any of the monitoring periods listed in paragraph 18 above, a plan for submitting NCRs shall be submitted instead. The plan must be signed by the Responsible Official and Cognizant Official and include the following information:

- a. An acknowledgement of when NCRs are required; and
- b. Who will be submitting the NCRs.

For any future violations, Respondent shall submit NCRs on the form at <https://www.adeg.state.ar.us/water/enforcement/pdfs/ncr-form.pdf> completed in accordance with Part III, Section D, Condition 7 of the Permit. Respondent shall submit a copy of such NCRs to the Enforcement Branch of the DEQ Office of Water Quality via email at water-enforcement-report@adeq.state.ar.us.

7. Respondent shall sample and analyze the effluent for each parameter set forth in Part I, Section A of the Permit at the frequency required in Part I, Section A of the Permit.

8. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Nine Thousand Five Hundred Dollars (\$9500.00), or one-half of the full civil penalty of Four Thousand Seven Hundred Fifty Dollars (\$4750.00) if this Order is signed and returned to the Office of Water Quality Enforcement Branch, DEQ, 5301 Northshore Drive, North Little Rock, Arkansas, 72118-5317, within twenty (20) calendar days of receipt of this Order. Even if the conditions for receiving a reduced penalty of Four Thousand Seven Hundred Fifty Dollars (\$4750.00) have been met, failure to otherwise comply with this Order will result in the penalty reverting to the full civil penalty of Nine Thousand Five Hundred

Dollars (\$9500.00) and shall become due immediately and payable to DEQ. Payment is due within thirty (30) calendar days of the effective date of this Order. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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) calendar 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.

14. 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.

15. By virtue of the signature appearing below, the individual represents that he or she is a Managing Member of Respondent, being duly authorized to execute and bind Respondent to the terms contained herein as attested by the secretary of said entity. Execution of this Order by an individual other than a Managing Member 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 31st DAY OF MAY, 2024.

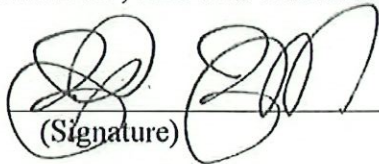


CALEB J. OSBORNE, DIVISION OF ENVIRONMENTAL QUALITY, DIRECTOR
CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

Landers BCO, LLC dba Crossroads Village

BY:


(Signature)

DR. IAN BLACK
(Typed or printed name)

TITLE: MANAGING MEMBER

DATE: 5-29-2024