

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT  
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of McRae  
P.O. Box 189  
McRae, AR 72102

LIS No. 24- 102  
Permit No. AR0021504  
AFIN 73-00074

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 McRae (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 municipal wastewater treatment facility (“facility”) located on Kip Lane, McRae, White County, Arkansas.
2. Respondent discharges treated wastewater to Dry Branch, thence to Cane Creek, thence to Bull Creek, thence to Cypress Bayou, thence to Bayou Des Arc, thence to the White River in Segment 4D of the White 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 a 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.”

#### Permit Renewal Application

9. DEQ issued NPDES Permit Number AR0021504 (“Permit”) to Respondent on May 20, 2019. The Permit became effective on June 1, 2019, and expires on May 31, 2024.

10. Part III, Section D, Condition 10 of the Permit requires Respondent to submit a complete permit renewal application at least 180 days prior to the expiration date of the Permit if the activity regulated by the Permit is to continue after the expiration date.

11. Respondent intends to operate this facility beyond the expiration date of the current permit, May 31, 2024.
12. On June 1, 2023, September 6, 2023, and September 20, 2023, DEQ notified Respondent that the Permit would expire on May 31, 2024, and that in order to continue the regulated activity, a complete renewal application must be submitted no later than December 3, 2023.
13. On February 16, 2024, DEQ notified Respondent that the Permit renewal application was overdue.
14. On March 28, 2024, Respondent submitted the Permit renewal application, and on March 28, 2024, DEQ notified Respondent that the application was incomplete.
15. On April 1, 2024, Respondent submitted additional information to complete the Permit renewal application.
16. The complete Permit renewal application was not received by December 3, 2023. Failure to submit the complete Permit renewal application by December 3, 2023, is a violation of Part III, Section D, Condition 10 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

Failure to Pay Annual Permit Fees

17. DEQ is authorized by Ark. Code Ann. § 8-1-103 to charge fees for issuance, modification, and annual review of permits. APC&EC Rule 9.301(D) provides that:

A permitted facility failing or refusing to pay the annual fee in a timely manner shall be subject to a late payment charge as established in these regulations. Continued refusal to pay the required fees after a reasonable notice shall constitute grounds for legal action by the Division, which may result in revocation of the permit.

18. On August 4, 2020, DEQ issued invoice number PDS-182813 for annual fees for NPDES Permit Number AR0021504 with the amount due of One Thousand Ninety-six dollars (\$1096.00). Payment was due by September 18, 2020.

19. As of this date, Respondent has failed to pay the invoice. The total amount due and owing for invoice PDS-182813 is One Thousand Ninety-six dollars (\$1096.00). This failure is a violation of Part III, Section A, Condition 11 of the Permit and APC&EC Rule 9.301(D) and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

#### DMR Violations

20. On April 11, 2024, DEQ conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.

21. 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, 2021 through February 29, 2024:

- a. Ten (10) violations of Fecal Coliform Bacteria;
- b. Three (3) violations of Total Suspended Solids;
- c. Two (2) violations of Ammonia Nitrogen; and
- d. One (1) violation of Carbonaceous Biochemical Oxygen Demand.

22. Each of the sixteen (16) discharge limitation violations listed in Paragraph 21 above constitutes a separate permit violation for a total of sixteen (16) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

23. The review of the DMRs also revealed that Respondent failed to submit DMRs by the due date for the following twenty-two (22) monitoring periods:

- a. 2021: March, June, August, September, October, November;

- b. 2022: January, April, May, July, August, September, October, November, December;
- c. 2023: January, February, May, August, November; and
- d. 2024: January, February.

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).

### ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall comply with the existing Permit until the effective date of the permit renewal.
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 paragraph 21 and prevent future violations. The CAP shall also identify a system that will be implemented to ensure that Respondent meets all reporting requirements set forth in the Permit. The CAP shall include a reasonable milestone schedule with a date of final compliance no later than December 31, 2026. 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.
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

permitted effluent limits set forth in Part I, Section A of the Permit. Within thirty (30) calendar days of the final compliance date in the approved CAP or by December 31, 2026, whichever occurs first, Respondent shall submit a final compliance report that includes a certification of compliance, signed and stamped by a Professional Engineer licensed in the state of Arkansas

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

5. Within thirty (30) calendar days of the effective date of this Order, Respondent shall pay One Thousand Ninety-six Dollars (\$1096.00) for the annual fees associated with invoice PDS-182813. The total amount shall be made payable to the Division of Environmental Quality and mailed to:

DEQ, Fiscal Division  
PDS-182813  
5301 Northshore Drive  
North Little Rock, AR 72118-5317

6. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Four Thousand Eight Hundred Dollars (\$4800.00), of which Three Thousand Eight Hundred Dollars (\$3800.00) 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 efforts to take appropriate corrective actions to achieve compliance with the Permit. If Respondent fully complies with this Order, the suspended civil penalty of Three Thousand Eight Hundred Dollars (\$3800.00) 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 Four Thousand Eight Hundred Dollars (\$4800.00) shall be 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. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

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

15. 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 4 DAY OF June, 2024.

*Bailey Taylor*

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

APPROVED AS TO FORM AND CONTENT:

City of McRae

BY: *Joel Pruitt*  
(Signature)

JOEL PRUITT  
(Typed or printed name)

TITLE: MAYOR

DATE: 5-21-24

RESOLUTION NO. 2024-1

A RESOLUTION AUTHORIZING THE CITY OF MERRAE 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 MERRAE:**

- 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 MERRAE authorizes the Mayor to sign the proposed Consent Administrative Order.*
- 3. The City Council of the City of MERRAE 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 21 day of MAY, 2024

APPROVED: Joel Pruitt  
Mayor

ATTEST: Debra L. McDaniel  
City Clerk

**MCRAE CITY REGULAR COUNCIL  
MEETING**

**DATE: 05/21/2024**

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**MOTION MADE BY COUNCIL MEMBER:**

Terry Hogan made the motion to approve Resolution 2024-01.

**SECONDED BY COUNCIL MEMBER:**

Motion seconded by Lori Marrs.

<u>VOTE:</u>	<u>YES</u>	<u>NO</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
<u>BOBBY CRISCO</u>	<u>X</u>			
<u>RICH EGAN</u>	<u>X</u>			
<u>TERRY HOGAN</u>	<u>X</u>			
<u>LORI MARRS</u>	<u>X</u>			<u>-</u>

**TOTAL**

**Motion Passed**   X  

**Failed**