

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT  
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of DeQueen  
P.O Box 730  
DeQueen, AR 71832

LIS No. 24- 104  
Permit No. AR0021733  
AFIN 67-00023

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 DeQueen (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 municipal wastewater treatment facility ("facility") located at 670 South 9<sup>th</sup> Street, DeQueen, Sevier County, Arkansas.
2. Respondent discharges treated wastewater to an unnamed tributary, thence to Bear Creek, thence to the Rolling Fork River, thence to the Little River, thence to Millwood Reservoir, thence to the Little River, thence to the Red River in Segment 1 C of the Red 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 AR0021733 (“Permit”) to Respondent on March 16, 2020. The Permit became effective on April 1, 2020, and expires on March 31, 2025.
10. On October 26, 2023, 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 March 31, 2022, through September 30, 2023:

- a. Seven (7) violations of Total Recoverable Copper;
- b. Four (4) violations of Total Phosphorus; and
- c. One (1) violation of Nitrate + Nitrite Nitrogen.

12. Each of the twelve (12) discharge limitation violations listed in Paragraph 11 above constitutes a separate permit violation for a total of twelve (12) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

### **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, 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 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.
3. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Two Thousand Eight Hundred Dollars (\$2800.00), of which One Thousand Four Hundred Dollars (\$1400.00) 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 One Thousand Four Hundred Dollars (\$1400.00) 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 Two Thousand Eight Hundred Dollars (\$2800.00) shall be payable immediately to DEQ. Payment of the civil penalty in the amount of One Thousand Four Hundred Dollars (\$1400.00) 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

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

12. 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 17 DAY OF June, 2024.

Bailly Taylor

Bailly Taylor

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

Interim

APPROVED AS TO FORM AND CONTENT:

City of DeQueen

BY: \_\_\_\_\_

(Signature)

Jeff Brown

(Typed or printed name)

TITLE: \_\_\_\_\_

Mayor

DATE: \_\_\_\_\_

6-10-24

**RESOLUTION NO. 2024-15**

**A RESOLUTION AUTHORIZING THE CITY OF DEQUEEN 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 DE QUEEN:**

**Section 1:** The proposed Consent Administrative Order has been reviewed and approved by the City Council in a duly convened meeting with a quorum present.

**Section 2:** The City Council of the City of De Queen authorizes the Mayor to sign the proposed Consent Administrative Order.

**Section 3:** The City Council of the City of De Queen 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.

Passed and approved this 4<sup>th</sup> day of June, 2024.

Approved By: Jeff Brown  
Jeff Brown, Mayor

Attest: Donna Jones  
Donna Jones, CMC, CAMC  
City Clerk/Treasurer

(SEAL)



**CLERK'S CERTIFICATE**

I, DONNA JONES, City Clerk of the City of De Queen, Sevier County, Arkansas, the duly elected and serving custodian of the official records of the City, hereby certify that the above and foregoing Resolution No. 2024-15 was passed and adopted by the City Council of the City of De Queen, Arkansas on the 4<sup>th</sup> day of June, 2024, in regular session assembled, at which meeting a quorum, as required by law, was present and voting thereon.

WITNESS my hand and the Seal of the City of De Queen, Arkansas this 4<sup>th</sup> day of June, 2024.

  
\_\_\_\_\_  
Donne Jones, CMC, CAMC  
City Clerk/Treasurer

(SEAL)