

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT  
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Lonoke  
107 West Second Street  
Lonoke, AR 72086

LIS No. 24- 118  
Permit No. AR0034746  
AFIN 43-00061

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 Lonoke (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 at 1219 Barnes Street, Lonoke, Lonoke County, Arkansas.
2. Respondent discharges treated wastewater to Bayou Two Prairie, thence to Bayou Meto, thence to the Arkansas River in Segment 3B of the Arkansas 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 AR0034746 (“Permit”) to Respondent on April 23, 2019. The Permit became effective on May 1, 2019, and expired on April 30, 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, April 30, 2024.

12. On May 1, 2023, August 2, 2023, and September 20, 2023, DEQ notified Respondent that the Permit would expire on April 30, 2024, and that in order to continue the regulated activity, a complete renewal application must be submitted no later than November 2, 2023.

13. On February 16, 2024, DEQ notified Respondent that the permit renewal application was overdue.

14. On February 20, 2024, DEQ received a Permit renewal application from Respondent. On March 12, 2024, DEQ notified Respondent that the Permit renewal application was determined to be administratively complete on February 20, 2024.

15. The complete Permit renewal application was not received by November 2, 2023. Failure to submit the complete Permit renewal application by November 2, 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).

#### Inspection Violations

16. On February 23, 2023, DEQ conducted a routine compliance evaluation inspection of the facility. The inspection revealed the following:

- a. A calibration check revealed a 93% error for the two-foot weir with end contractions. The device was last calibrated on January 23, 2023; however, calibration checks were not being conducted by Respondent.
- b. The five original aerators within the three-cell lagoon were not functional at the time of the inspection.

17. On June 29, 2023, DEQ notified Respondent of the inspection results. DEQ requested a written response to the February 23, 2023 inspection by July 17, 2023. On July 6, 2023, DEQ received Respondent's response to the violations cited in the inspection report. On July 25, 2023, DEQ deemed the inspection response adequate.

### DMR Violations

18. On July 5, 2023, DEQ notified Respondent via email of effluent violations, and requested that Respondent submit a Corrective Action Plan (CAP) to DEQ by July 31, 2023. DEQ also requested the submittal of missing Non-Compliance Reports (NCRs), due by July 14, 2023.

19. On July 5, 2023, Respondent notified DEQ via email that they felt a CAP was unnecessary. The notification included the missing NCRs.

20. On July 6, 2023, DEQ retracted the CAP request, but notified Respondent that continued effluent violations would result in enforcement action from DEQ.

21. On June 5, 2024, DEQ conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.

22. 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 April 30, 2024:

- a. Six (6) violations of Dissolved Oxygen;
- b. Three (3) violations of Fecal Coliform Bacteria;
- c. Two (2) violations of Discharge Flow as Percentage of Stream Flow; and
- d. One (1) violation of pH.

23. Each of the twelve (12) discharge limitation violations listed in Paragraph 22 above constitutes a separate permit violation for a total of twelve (12) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

24. The review of the DMRs further revealed that Respondent failed to submit DMRs by the due date for the monitoring period ending January 31, 2024. 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. Respondent shall immediately comply with all permitted effluent limits, unless a Corrective Action Plan (CAP) is submitted and approved by DEQ, in which case, Respondent shall comply with all permitted effluent limits no later than December 31, 2025.
3. If unable to immediately comply with all permitted effluent limits, within thirty (30) calendar days of the effective date of this Order, Respondent shall submit to DEQ, for review and approval, a comprehensive 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 the 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.
4. If a CAP is submitted, 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. The progress reports shall be submitted 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. Within thirty (30) calendar days of the final compliance date in the approved CAP or by December 31, 2025, 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.

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

6. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Three Thousand Dollars (\$3000.00), or one-half of the full civil penalty of One Thousand Five Hundred Dollars (\$1500.00) 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 One Thousand Five Hundred Dollars (\$1500.00) have been met, failure to otherwise comply with this Order will result in the penalty reverting to the full civil penalty of Three Thousand Dollars (\$3000.00) 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.

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 18<sup>th</sup> DAY OF July, 2024.

Bailey Taylor  
BAILEY TAYLOR, DIVISION OF ENVIRONMENTAL QUALITY, INTERIM DIRECTOR  
CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

City of Lonoke

BY: Wayne McGee  
(Signature)

Wayne McGee  
(Typed or printed name)

TITLE: Mayor

DATE: 7-8-24



**RESOLUTION NO. 7-1-2024**

**A RESOLUTION AUTHORIZING THE CITY OF LONOKE 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 LONOKE:**

- 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 Lonoke authorizes the Mayor to sign the proposed Consent Administrative Order.*
- 3. The City Council of the City of Lonoke 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 8th day of July, 2024

APPROVED: Wayne Musee  
Mayor

ATTEST: Regina Mooten  
City Clerk