

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Bradley
P.O. Box 729
Bradley, AR 71826

LIS No. 24- 131
Permit No. AR0020621
AFIN 37-00029

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 Bradley (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 plant ("facility") located on the corner of Highway 160 and Crabtree Lane, Bradley, Lafayette County, Arkansas.
2. Respondent discharges treated wastewater to an unnamed tributary of Wheeler Creek, thence to Wheeler Creek, thence to Martin Creek (into Louisiana) in Segment 1A 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 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.”

9. DEQ issued NPDES Permit Number AR0020621 (“Permit”) to Respondent on July 21, 2015. The Permit became effective on September 1, 2015, and expired on August 31, 2020. The Permit was administratively continued pursuant to APC&EC Rule 6.201 until DEQ issued the renewal Permit on May 17, 2021, with an effective date of June 1, 2021, and an expiration date of May 31, 2026.

10. On July 25, 2015, DEQ and Respondent entered into Consent Administrative Order LIS 15-092 (CAO LIS 15-092), which became effective on September 10, 2015, to address the

violations of the permitted effluent discharge limitations. CAO LIS 15-092 was amended on June 13, 2017, again on May 13, 2019, and most recently on October 4, 2021. The Final Compliance date in CAO LIS 15-092, as amended, is January 31, 2024.

11. On July 28, 2023, DEQ conducted a Reconnaissance Inspection of the facility. The inspection revealed the following violations:

- a. Excessive vegetation on the lagoon levees;
- b. Lagoon aerator was not installed;
- c. Pooling in the plant rock filter;
- d. Excessive woody vegetation in the aquatic plant rock filter;
- e. Excessive duckweed in the chlorine contact chamber; and
- f. Recently mowed grass clippings present in the Parshall flume.

The above conditions demonstrate Respondent's failure to operate and maintain the facility properly and are violations of Part III, Section B, Condition 1 of the Permit and therefore are violations of Ark. Code Ann. § 8-4-217(a)(3).

12. The inspection also revealed that the aerator for the pond was not installed. It was explained to the inspector that the aerator was taken to a shop for repair. It was also explained that the hired mechanic claims the aerator was stolen from his shop.

13. On October 30, 2023, DEQ notified Respondent of the inspection results via letter and requested a written response to the violations.

14. On November 27, 2023, DEQ received Respondent's written response to the violations cited in the inspection report. The response provided photographic documentation that the violations had been addressed, except for the installation of the aerator as Respondent has not been able to get it back from the hired mechanic.

15. On July 31, 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 March 1, 2021, through June 30, 2024:

- a. Fifteen (15) violations of Fecal Coliform Bacteria;
- b. Three (3) violations of Total Suspended Solids;
- c. Three (3) violations of Dissolved Oxygen; and
- d. One (1) violation of Ammonia Nitrogen.

17. Each of the twenty-two (22) discharge limitation violations listed in Paragraph 15 above constitutes a separate permit violation for a total of twenty-two (22) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Upon the effective date of this Order, CAO LIS 15-092, as amended by CAO LIS 15-092-001, as amended by CAO LIS 15-092-002, as amended by CAO LIS 15-092-003 shall be closed.
2. On or before the effective date of this Order, Respondent shall submit a certification that the facility is in compliance with all effluent limits and conditions in the Permit. If Respondent submits a certification that the facility is in compliance with the Permit requirements, Respondent is not required to submit a revised milestone schedule and report on its progress as specified by Paragraph 3 below.
3. If Respondent is unable to certify compliance with all effluent limits and conditions in the Permit, Respondent shall, within thirty (30) calendar days of the effective date of this Order, submit

to DEQ, for review and approval, a reasonable milestone schedule detailing the corrective actions required to comply with the Permit and a date of final compliance no later than March 31, 2026. The milestone schedule and final date of compliance shall be fully enforceable as terms of this Order.

4. Within thirty (30) calendar days of the effective date of this Order, Respondent shall submit a certification, including photographic documentation, that the pond aerator has been installed.

5. If a corrective action milestone schedule is submitted, Respondent shall continue to 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 milestone schedule or by March 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.

6. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Seven Thousand Four Hundred Dollars (\$7400.00), of which Six Thousand Nine Hundred Dollars (\$6900.00) 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 Six Thousand Nine Hundred Dollars (\$6900.00) 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 Seven Thousand Four Hundred Dollars (\$7400.00) shall be payable immediately to DEQ. Payment of the civil penalty in the amount of Five Hundred Dollars (\$500.00) 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 the 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 21 ^{BMT} DAY OF August, 2024.

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

APPROVED AS TO FORM AND CONTENT:

City of Bradley

BY: [Signature]
(Signature)

JASON MARTIN
(Typed or printed name)

TITLE: Mayor

DATE: 8/8/24

RESOLUTION NO. 3-24

A RESOLUTION AUTHORIZING THE CITY OF Bradley 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 Bradley:

- 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 Bradley authorizes the Mayor to sign the proposed Consent Administrative Order.*
- 3. The City Council of the City of Bradley 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 August, 2024

APPROVED: _____

Mayor

ATTEST _____

City Clerk