

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Lockesburg
110 E. Main Street
Lockesburg, AR 71846

LIS No. 24- **135**
Permit No. AR0021377
AFIN 67-00022

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 Lockesburg (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 433 Highway 24, Lockesburg, Sevier County, Arkansas.
2. Respondent discharges treated wastewater to an unnamed tributary, thence to the Little Cossatot River, thence to the Cossatot River, thence to the Little River in Segment 1C 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 AR0021377 (“Permit”) to Respondent on June 3, 2020. The Permit became effective on July 1, 2020, and expires on June 30, 2025.

Inspection Violations

10. On September 21, 2023, DEQ conducted a reconnaissance evaluation inspection of the facility. The inspection revealed the following violations:

- a. Pooling was noted in the aquatic rock filter in violation of Part III, Section B, Condition 1 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

11. On November 8, 2023, DEQ notified Respondent of the inspection results and requested a written response to the inspection, including photo documentation, be submitted by November 27, 2023. To date, Respondent has not submitted a written response to the September 21, 2023 inspection.

DMR Violations

12. On July 23, 2024, DEQ conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.

13. 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 February 1, 2021, through May 31, 2024:

- a. Eight (8) violations of Fecal Coliform Bacteria;
- b. Six (6) violations of Total Suspended Solids; and
- c. Two (2) violations of Carbonaceous Biochemical Oxygen Demand.

14. Each of the sixteen (16) discharge limitation violations listed in Paragraph 13 above constitutes a separate permit violation for a total of sixteen (16) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

15. The review of the DMRs revealed that Respondent failed to submit Non-Compliance Reports (NCRs) for effluent violations reported during the December 2021 monitoring period. 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).

16. The review of the DMRs further revealed that Respondent failed to submit DMRs by the due date for the following fifteen (15) monitoring periods:

- a. 2021: April, May, June, July, September, November, December;
- b. 2022: March, April, May;
- c. 2023: May, October, November, December; and
- d. 2024: January.

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 immediately comply with all permitted effluent limits, unless a Corrective Action Plan (CAP) is submitted as provided in Paragraph 2 of this Order and approved by DEQ, in which case, Respondent shall comply with all permitted effluent limits no later than January 31, 2026.
2. If unable to comply immediately 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 and include a reasonable milestone schedule with a date of final compliance no later than January 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. If a CAP is submitted, Respondent shall, 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, 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 January 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) days of the effective date of this Order, Respondent shall submit an adequate response to the September 21, 2023 inspection.
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 Six Hundred Dollars (\$4600.00), of which Four Thousand Dollars (\$4000.00) 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 Four Thousand Dollars (\$4000.00) 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 Six Hundred Dollars (\$4600.00) shall be payable immediately to DEQ. Payment of the civil penalty in the amount of Six Hundred Dollars (\$600.00) 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 30th 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 Lockesburg

BY: Danny Ruth
(Signature)

Danny Ruth
(Typed or printed name)

TITLE: Mayor / Operator in Charge

DATE: AUG 13 2024

Resolution 2024-4

A resolution allowing the Mayor and Recorder/Treasurer to Sign CAO.

WHEREAS: The Division of Environmental Quality has proposed a Consent Administrative Order for Violations at the wastewater Plant.

WHEREAS: The Council of the City of Lockesburg finds it necessary to allow the Mayor and Recorder/Treasurer to Sign any paperwork necessary to comply with the (CAO).

PASSED AND APPROVED by the order of the Lockesburg City Council this 13th Day of August.



Danny Ruth, Mayor



Becky Jegstrup, Recorder/Treasurer

ATTEST: I do hereby affirm that the above resolution was passed and approved at the Lockesburg City Council Meeting on August 13, 2024.



Becky Jegstrup, Recorder/Treasurer

(SEAL)