

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT  
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

U.S. Army Corps of Engineers  
Cowhide Cove Recreation Area, Lake Greeson  
155 Dynamite Hill Road  
Murfreesboro, AR 71958

LIS No. 24- 140  
Permit No. AR0036048  
AFIN 55-00041

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 U.S. Army Corps of Engineers- Cowhide Cove Recreation Area, Lake Greeson (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 non-municipal domestic sanitary wastewater treatment plant ("facility") located at 226 New Cowhide Cove, Murfreesboro, Pike County, Arkansas.
2. Respondent discharges treated wastewater to Lake Greeson, thence to the Little Missouri River, thence to the Ouachita River in Segment 2G of the Ouachita 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 AR0036048 (“Permit”) to Respondent on November 21, 2019. The Permit became effective on December 1, 2019, and expires on November 30, 2024.

#### Late Permit Renewal Application

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, November 30, 2024.

12. On December 1, 2023, and March 6, 2024, DEQ notified Respondent that the Permit would expire on November 30, 2024, and that in order to continue the regulated activity, a complete renewal application must be submitted no later than June 3, 2024.

13. On July 17, 2024, Respondent notified DEQ that it intends to submit a no-discharge permit application.

14. To date, Respondent has not submitted a complete permit renewal application or a no-discharge permit application

15. The complete Permit renewal application was not received by June 3, 2024. Failure to submit the complete Permit renewal application by June 3, 2024, 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).

#### DMR Violations

16. On May 15, 2023, DEQ conducted a review of the Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.

17. On June 26, 2023, DEQ sent Respondent a letter requesting a Corrective Action Plan (CAP) be submitted to address the effluent violations. The CAP was to have a milestone schedule, a final date of compliance, and be certified by a Professional Engineer (P.E.) licensed in the state of Arkansas.

18. On August 7, 2023, Respondent submitted a CAP to DEQ with a final compliance date of December 1, 2024.

19. On November 17, 2023, DEQ notified Respondent that the CAP submitted on August 7, 2023, was deemed adequate with comments.

20. On November 18, 2023, DEQ conducted a review of certified 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 October 1, 2020, through September 30, 2023:

- a. Five (5) violations of *E. coli*;
- b. Four (4) violations of Total Residual Chlorine; and
- c. Three (3) violations of Ammonia Nitrogen.

22. Each of the twelve (12) discharge limitation violations listed in Paragraph 20 above constitutes a separate permit violation for a total of twelve (12) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

23. On June 18, 2024, DEQ conducted a follow-up review of certified DMRs submitted by Respondent in accordance with the Permit.

24. 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 October 1, 2023, through April 30, 2024:

- a. Two (2) violations of Total Residual Chlorine; and
- b. One (1) violation of Total Phosphorus.

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

#### Permit Schedule Violation

26. Per the requirements of Part I, Section B of the Permit, Respondent was to submit progress reports for two (2) years, detailing the actions taken to achieve compliance with the final effluent limits for Total Residual Chlorine (TRC) and Total Phosphorus (TP). The progress reports were due one (1) year and two (2) years from the effective date of the Permit. The final effluent limits for TRC and TP became effective three (3) years from the effective date of the Permit. Respondent was to submit a certification that the facility was in compliance with the final effluent limits for TRC and TP three (3) years from the effective date of the Permit.

27. On January 7, 2021, and November 30, 2021, Respondent submitted the progress reports detailing the actions taken to achieve compliance with the final effluent limits for TRC and TP.

28. On February 8, 2023, Respondent submitted a letter to DEQ regarding the sample results for TRC and TP. The sample results indicated that the facility was not in compliance with the final effluent limits for TRC.

29. Failure to certify compliance with the final effluent limits for TRC by December 1, 2022, is a violation of Part I, Section B 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. On or before the effective date of this Order, Respondent shall submit an administratively complete no-discharge permit application.
2. Respondent shall comply with the existing Permit until either the effective date of the no-discharge permit or the effective date of the permit termination.
3. 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. 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 effluent limits set forth in Part I, Section A of the Permit. Respondent shall submit a final compliance report that includes a certification of compliance within thirty (30) calendar days of the final compliance date in the approved CAP.

5. To ensure regulatory compliance, Respondent agrees to be subject to a civil penalty of Seven Thousand Four Hundred Dollars (\$7400.00) for any ongoing and future violations related to the violations specified in the Findings of Fact should the Respondent fail to remedy the ongoing violations prior to the final compliance date contained in the approved CAP. The above referenced civil penalty is to ensure regulatory compliance by Respondent. If Respondent fully complies with this Order, the proposed civil penalty of Seven Thousand Four Hundred Dollars (\$7400.00) shall not be pursued by DEQ. If Respondent fails to remedy the ongoing violations as described in the proposed CAP, or violates any other term of this Order, a penalty of Seven Thousand Four Hundred Dollars (\$7400.00) shall be payable immediately to DEQ.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. Each of the undersigned representatives of the parties certifies that he or she is authorized to execute this Order and to legally bind that party to its terms and conditions.

SO ORDERED THIS 25 DAY OF September, 2024.

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

APPROVED AS TO FORM AND CONTENT:

U.S. Army Corps of Engineers- Cowhide Cove Recreation Area, Lake Greeson

BY: Jason D. Mooney  
(Signature)

JASON D. MOONEY, P.E.  
(Typed or printed name)

TITLE: DEPUTY CHIEF, OPERATIONS DIVISION

DATE: 19 SEP 2024