

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

U.S. Army Corps of Engineers
Little Fir Recreation Area
1424 Blakely Dam Road
Royal, AR 71968

LIS No. 25- **005**
Permit Number: AR0022799
AFIN 49-00034

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 the rules issued thereunder by Arkansas Pollution Control and Ecology Commission (APC&EC).

The issues herein having been settled by the agreement of U.S. Army Corps of Engineers Little Fir Recreation Area (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 industrial wastewater treatment facility ("Facility") located on Little Fir Recreation Area Road, Mount Ida, Montgomery County, Arkansas.
2. Respondent discharges treated wastewater to Lake Ouachita, thence to the Ouachita River in Segment 2F 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 *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.”

Late Permit Renewal Application

9. DEQ issued NPDES Permit Number AR0022799 (“Permit”) to Respondent on May 8, 2019. The Permit became effective on June 1, 2019, and expired on May 31, 2024.

10. Part III.D.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 has operated this Facility beyond the expiration date of the current permit, May 31, 2024.

12. On June 1, 2023, and September 6, 2023, DEQ notified Respondent that the Permit would expire on May 31, 2024, and that in order to continue the regulated activity, a complete renewal application must be submitted no later than November 3, 2023.

13. DEQ received a Permit renewal application from Respondent on November 8, 2023, and notified Respondent that its application was incomplete on November 8, 2023.

14. Respondent submitted a complete Permit renewal application to DEQ on November 8, 2023.

15. The complete Permit renewal application was not received by November 3, 2023. Failure to submit the complete Permit renewal application by November 3, 2023, is a violation of Part III.D.10 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

DMR Violations

16. On January 3, 2024, DEQ conducted a review of the certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.

17. The review revealed that Respondent reported the following violations of the permitted effluent discharge limits detailed in Part I.A of the Permit from November 1, 2020, through November 30, 2023:

- a. Four (4) violations of Total Suspended Solids; and
- b. Two (2) violations of Carbonaceous Biochemical Oxygen Demand.

18. Each of the six (6) discharge limitation violations listed in Paragraph 17 above constitutes a separate permit violation for a total of six (6) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

19. The review of the DMRs also revealed that Respondent failed to submit DMRs by the due date for the following four (4) monitoring periods:

- a. 2022: March, April, May, and June.

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.C.5 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

20. The review further revealed that Respondent failed to conduct analysis for the monitoring periods ending March 31, 2021, and July 31, 2022. Failure to monitor the effluent in accordance with the requirements set forth in Part I.A of the Permit is a violation of Part I.A 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 either the effective date of the permit renewal or the effective date of the permit termination.
2. Respondent shall sample the effluent in accordance with the requirements set forth in Part I.A of the Permit.
3. Respondent shall submit all DMRs in accordance with Part III.C.5 of the Permit.
4. To ensure regulatory compliance, Respondent agrees to be subject to a civil penalty of Two Thousand Two Hundred Dollars (\$2200.00) 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 Two Thousand Two Hundred Dollars (\$2200.00) shall not be pursued by DEQ. If Respondent fails to remedy the ongoing violations or violates any other

term of this Order, the penalty of Two Thousand Two Hundred Dollars (\$2200.00) shall be payable immediately to DEQ.

5. 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.

6. 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.

7. DEQ may grant an extension of any provision of this Order, provided that Respondent requests such an extension in writing and provided that 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. The burden of proving that any delay is caused by circumstances beyond the control of and without the fault of Respondent and the length of the

delay attributable to such circumstances shall rest with Respondent. Failure to notify DEQ promptly, as provided in the preceding paragraph of this Section, shall be grounds for a denial of an extension.

8. 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.

9. 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.

10. 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.

11. 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 23 DAY OF January, 2025.

Bailey Taylor
BAILEY M. TAYLOR, CHIEF ADMINISTRATOR OF ENVIRONMENT AND DEQ
DIRECTOR
DEPARTMENT OF ENERGY AND ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

U.S. Army Corps of Engineers
Little Fir Recreation Area

BY: 
(Signature)

JASON D. MOONEY
(Typed or printed name)

TITLE: DEPUTY CHIEF, OPERATIONS DIVISION

DATE: 08 JAN 2025