

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Lakeside Gardens Horizontal Property Regime
Lakeside Gardens Condominiums
5201 Albert Pike Road, Until B4
Hot Springs, AR 71913

LIS No. 25- 008
Permit Number: AR0050644
AFIN 26-00908

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 the Arkansas Pollution Control and Ecology Commission (APC&EC).

The issues herein having been settled by the agreement of Lakeside Gardens Horizontal Property Regime – Lakeside Gardens Condominiums (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 treatment facility (“Facility”) located at 5201 Albert Pike Road, Hot Springs, Garland County, Arkansas.
2. Respondent discharges treated wastewater to Lake Hamilton, thence to Lake Catherine, thence of 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(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.”

Late Permit Renewal Application

9. DEQ issued NPDES Permit Number AR0050644 (“Permit”) to Respondent on April 18, 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 permit renewal application must be submitted no later than November 2, 2023.

13. DEQ received a Permit renewal application from Respondent on November 6, 2023, and on November 9, 2023, DEQ notified Respondent that its application was incomplete.

14. Respondent submitted a complete Permit renewal application to DEQ on December 6, 2023.

15. On December 13, 2023, DEQ notified Respondent that the Permit renewal application submitted on December 6, 2023, was deemed administratively complete on December 6, 2023.

16. 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).

DMR Violations

17. On January 31, 2025, DEQ conducted a review of the certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.

18. 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 December 31, 2024:

- a. Nine (12) violations of Dissolved Oxygen;
- b. Two (2) violations of pH;

- c. One (1) violation of Fecal Coliform; and
- d. One (1) violation of Oil and Grease.

19. Each of the sixteen (16) discharge limitation violations listed in Paragraph 18 above constitutes a separate permit violation for a total of sixteen (16) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

20. The review of the DMRs further revealed that Respondent failed to submit Non-Compliance Reports (NCRs) for effluent violations reported during the monitoring period ending August 30, 2022. 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).

21. The review of the DMRs also revealed that Respondent failed to submit DMRs by the due date for the monitoring period ending December 31, 2021. 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).

Overdue Permit Late Fees

22. DEQ is authorized by Ark. Code Ann. § 8-1-103 to charge fees for issuance, modification, and annual review of permits. APC&EC Rule 9.301(D) provides that:

A permitted facility failing or refusing to pay the annual fee in a timely manner shall be subject to a late payment charge as established in these regulations. Continued refusal to pay the required fees after a reasonable notice shall constitute grounds for legal action by the Division, which may result in revocation of the permit.

23. On June 8, 2023, DEQ issued invoice number PDS-200109 for annual fees for NPDES Permit Number AR0050644 with the amount due of Nine Hundred Fifty-six Dollars (\$956.00).

Payment was due by July 23, 2023. Respondent failed to make payment in a timely manner, and later charges of Ninety-five Dollars and Sixty Cents (\$95.60) accrued.

24. Pursuant to ACP&C Rule 9.301(F), a late payment charge shall be assessed if the annual fee is not paid within forty-five (45) days of the billing date.

25. On August 30, 2023, Respondent submitted payment of PDS-200109 in the amount of Nine Hundred Fifty-six Dollars (\$956.00).

26. To date, Respondent has not submitted payment of the late fees in the amount of Ninety-five Dollars and Sixty Cents (\$95.60). This failure is a violation of Part III, Section A, Condition 11 of the Permit and APC&EC Rule 9.301(D) and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

27. On June 3, 2024, DEQ issued invoice number PDS-205265 for annual fees for NPDES Permit Number AR0050644 with the amount Due of One Thousand Fifty-One Dollars and Sixty Cents (\$1051.60). Payment was due by July 18, 2024.

28. To date, Respondent has not submitted payment of the Permit Fees in the amount of One Thousand Fifty-One Dollars and Sixty Cents (\$1051.60) This failure is a violation of Part III, Section A, Condition 11 of the Permit and APC&EC Rule 9.301(D) 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 immediately comply with all permitted effluent limits, unless a Corrective Action Plan (CAP) is submitted, as provided in Paragraph 3 of this Order, 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 comply immediately with all permitted effluent limits, Respondent shall, within thirty (30) calendar days of the effective date of this Order, 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 Findings of Fact Paragraph 18 and prevent future violations and 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 quarterly progress reports shall be due 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. Respondent shall submit NCRs in accordance with Part III, Section D, Condition 7 of the Permit.

7. Within thirty (30) calendar days of the effective date of this Order, Respondent shall pay Ninety-five Dollars and Sixty Cents (\$95.60) for the past due fees associated with PDS-200109 and One Thousand Fifty-One Dollars and Sixty Cents (\$1051.60) for fees associated with PDS-205265. The total amount shall be made payable to the Division of Environmental Quality and mailed to:

DEQ, Fiscal Division
PDS-200109
5301 Northshore Drive
North Little Rock, AR 72118-5317

8. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Two Thousand Nine Hundred Fifty Dollars (\$2950.00), or one-half of the full civil penalty of One Thousand Four Hundred Seventy-five Dollars (\$1475.00) 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. Payment is due within thirty (30) calendar days of the effective date of this Order. Even if the conditions for receiving the reduced penalty of One Thousand Four Hundred Seventy-five Dollars (\$1475.00) have been met, failure to otherwise comply with this Order will result in the penalty reverting to the full civil penalty of Two Thousand Nine Hundred Fifty Dollars (\$2950.00) and shall become due immediately and payable to DEQ. Payment of the penalty shall be made payable to the Division of Environmental Quality, and mailed to the attention of:

Division of Environmental Quality
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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

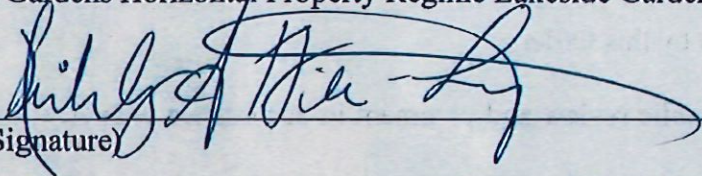
15. Each of the undersigned representatives of the parties certifies that he or she is authorized to execute this Order and to legally bind that party to its terms and conditions.

SO ORDERED THIS 4 DAY OF February, 2025.

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

APPROVED AS TO FORM AND CONTENT:

Lakeside Gardens Horizontal Property Regime Lakeside Gardens Condominiums

BY: 
(Signature)

KIMBERLY A GILL-LINDSEY
(Typed or printed name)

TITLE: PRESIDENT, LAKESIDE GARDENS P.O.A.

DATE: 02/03/2025

RESOLUTION NO. 101-A3

A RESOLUTION AUTHORIZING THE LAKESIDE GARDENS BOARD TO ENTER INTO A CONSENT ADMINISTRATIVE ORDER WITH THE ARKANSAS DEPARTMENT OF ENERGY & ENVIRONMENT, DIVISION OF ENVIRONMENTAL QUALITY (DEQ)

WHEREAS, it is in the Board'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.

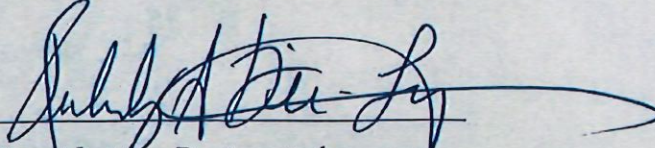
WHEREAS, the President or Designated person, working with a Professional Engineer, have developed a plan of action to address the issues listed in the proposed Consent Administrative Order.

NOW, THEREFORE, BE IT RESOLVED BY THE LAKESIDE GARDENS BOARD:

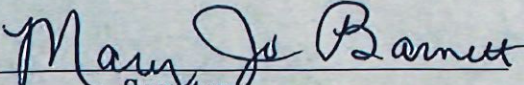
- 1. The proposed Consent Administrative Order has been reviewed and approved by the Board in a duly convened meeting with a quorum present.*
- 2. The Board authorizes the President or Designated person to sign the proposed Consent Administrative Order.*
- 3. The Board authorizes the President or Designated person 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 03 day of FEBRUARY, 2025

APPROVED:


President or Designated person

ATTEST:


Secretary