

**IN THE CIRCUIT COURT OF BENTON COUNTY, ARKANSAS  
CIVIL DIVISION**

ARKANSAS DEPARTMENT OF  
ENERGY AND ENVIRONMENT,  
DIVISION OF ENVIRONMENTAL  
QUALITY

PLAINTIFF

vs.

Docket No.: \_\_\_\_\_

CITY OF BETHEL HEIGHTS

DEFENDANT

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**COMPLAINT**

COMES NOW the Arkansas Department of Energy and Environment, Division of Environmental Quality (“DEQ” or “Division”), by and through its attorneys, Basil V. Hicks III and Stacie R. Wassell, and for its complaint against the City of Bethel Heights (“Defendant”) states the following:

**I. INTRODUCTION**

1. This matter is a civil action brought under the authority of the Arkansas Water and Air Pollution Control Act (“AWAPCA”), Ark. Code Ann. § 8-4-101 *et seq.*, and seeks to enforce a Consent Administrative Order (“CAO”) entered into by City of Bethel Heights and DEQ.

**II. PARTIES**

2. DEQ is an executive agency of the State of Arkansas charged with administering and enforcing all laws, rules, and regulations relating to the AWAPCA, Ark. Code Ann. § 8-4-201, *et seq.* DEQ has authority under Ark. Code Ann. § 8-4-103(b) to institute a civil action in any court of competent jurisdiction to compel compliance with any orders issued pursuant to the

AWAPCA; to affirmatively order that remedial measures be taken as may be necessary or appropriate to implement or effectuate the purposes and intent of the statutes; to recover all costs and expenses in enforcing or effectuating the provisions of the AWAPCA; and to assess civil penalties for violations of these statutes. DEQ's principle office is located at 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317.

3. Defendant is the City of Bethel Heights, a Municipal Corporation, located in Benton County, Arkansas.

### **III. JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction over this matter under Ark. Code Ann. § 16-13-201. This Court has personal jurisdiction over Defendant as Defendant is located in Benton County, Arkansas.

5. Venue is proper in this Court under Ark. Code Ann. §16-60-101.

### **IV. FACTUAL ALLEGATIONS**

6. The City of Bethel Heights operates a decentralized wastewater treatment system ("Defendant's Facility") serving the City of Bethel Heights, Benton County, Arkansas. Defendant's Facility is designed to distribute the effluent to the subsurface via the adjacent drip irrigation system. The part of Defendant's Facility located near Lincoln Street in Bethel Heights includes Phases 1, 2, and 3 of Defendant's drip irrigation system. The part of Defendant's Facility located near North Oak Street in Bethel Heights includes Phase 4, subdivided into Phase 4a and Phase 4b, of Defendant's drip irrigation system. Each Phase is subdivided into zones.

7. Defendant's Facility is regulated pursuant to the Ark. Code Ann. § 8-4-101 et seq., and APC&EC Regulation No. 17: Arkansas Underground Injection Control (UIC) Code.

8. DEQ issued Permit 4725-WR-5 ("Permit") (attached hereto as Exhibit 1 and incorporated herein) to the City of Bethel Heights on July 2, 2015. The Permit became effective on September 1, 2015, and expires on August 31, 2020.

9. Part II, Condition 3 of the Permit prohibits the City of Bethel Heights from operating its drip irrigation system in any manner that results in the effluent that is distributed subsurface from causing pooling or ponding on the surface of the land where the drip irrigation system is located. Pooling or ponding on the surface of the land where the drip irrigation system is located is referred to as surfacing. If surfacing occurs, Part II, Condition 3 requires that dispersal cease to that part of the drip irrigation system. Part II, Condition 3 of the Permit (Exhibit 1) states:

Wastewater shall not be discharged from this operation to the waters of the State or onto the land in any manner that may result in pooling, ponding, or runoff to the waters of the State. If any of the above conditions occur, dispersal shall cease immediately. Resumption of application activities cannot occur until all conditions of the permit are met. Note: Any evidence of runoff must be reported within 24 hours to the Enforcement Branch of the Water Division in accordance with Standard Condition 13 of Part III.

10. On August 16, 2019, DEQ issued a Notice of Violation, NOV LIS 19-070, to the City of Bethel Heights. In NOV LIS 19-070, DEQ alleged that the City of Bethel Heights had violated conditions of the Permit, including Part II, Condition 3 of the Permit. DEQ also alleged that Defendant violated AWAPCA.

11. On October 16, 2019, DEQ and the City of Bethel Heights entered into Consent Administrative Order, CAO LIS 19-070, to resolve the violations alleged in NOV LIS 19-070. CAO LIS 19-070 was public noticed on October 27, 2019, and became effective on November 26, 2019. CAO LIS 19-070 is attached hereto as Exhibit 2 and incorporated herein.

12. The Order and Agreement section of CAO LIS 19-070 required the City of Bethel Heights to prepare and submit to DEQ a detailed Facility Plan (Exhibit 2, Order and Agreement, Paragraphs 7 – 11) as well as an Implementation Plan (Exhibit 2, Order and Agreement, Paragraph 11) to address ongoing violations. It also required the City of Bethel Heights to submit interim measures for operation and implement the Haul Off Action Plan (Exhibit 2, Order and Agreement, Paragraphs 12 – 13). CAO LIS 19-070 included the following Order and Agreement paragraphs:

3. Respondent shall take all measures necessary to prevent pooling, ponding, or surfacing in the WWTS.

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#### Reporting

##### 5. Weekly Reports

a. Respondent shall monitor each zone in each phase on a daily basis and record all occurrences of surfacing. Respondent shall report all occurrences of surfacing observed in each phase and submit laboratory analysis for each area of surfacing in each phase.

b. Respondent shall report the volume of wastewater removed from the WWTS each day. The report shall include receipts for hauling trucks and documentation that the disposal of the removed wastewater has been disposed of in accordance with applicable law.

c. Respondent shall report progress of repairs for each phase or component of the WWTS.

d. Respondent shall report all regular and unanticipated maintenance and repair activities performed at the WWTS.

e. If Respondent demonstrates compliance with the Permit and this Order for four (4) consecutive months, then Respondent may request, in writing, a reduction in the reporting frequency.

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13. Respondent shall implement the daily removal of a volume of wastewater as estimated in the Facility Plan and in conjunction

with the Haul Off Action Plan, as approved by DEQ, and any adjustments based on the monthly Engineering Inspection Report.

13. In CAO LIS 19-070, the City of Bethel Heights agreed to a civil penalty of One Hundred One Thousand Two Hundred Dollars (\$101,200.00), and DEQ agreed to suspend Eighty-one Thousand Two Hundred Dollars (\$81,200.00) of that civil penalty on the condition that the City of Bethel Heights complied with the terms of CAO LIS 19-070. CAO LIS 19-070 states that “[i]f Respondent violates any term of this Order, the full balance of One Hundred One Thousand Two Hundred Dollars (\$101,200.00) shall be payable immediately to DEQ on demand.” (Exhibit 2, Order and Agreement, Paragraph 16)

14. Pursuant to CAO LIS 19-070, the City of Bethel Heights agreed to implement the daily removal of wastewater from Defendant’s Facility in accordance with the City of Bethel Heights’s Haul Off Action Plan. The City of Bethel Heights submitted its Haul Off Action Plan to DEQ prior to executing CAO LIS 19-070. In CAO LIS 19-070, the City of Bethel Heights agreed to determine the daily amount of wastewater to remove based on its Haul Off Action Plan in conjunction with its Facility Plan. The City of Bethel Heights’s Haul Off Action Plan states in part, “Additional days to Haul off and Number of Trucks can be added or deleted as needed as determined by the Operator to avoid surfacing.” The City of Bethel Heights’s Haul Off Action Plan is attached as Exhibit 3 and is incorporated herein.

15. Pursuant to CAO LIS 19-070, the City of Bethel Heights has submitted weekly progress reports. The City of Bethel Heights’s weekly progress reports have included records of all occurrences of surfacing reported during daily observations at Defendant’s Facility and invoices from wastewater hauling companies that report the volume of wastewater removed from Defendant’s Facility each day. The City of Bethel Heights’s weekly progress reports covering

the period from November 13, 2019 to February 23, 2020, are attached as Exhibit 4 and incorporated herein.

16. The City of Bethel Heights submitted its Facility Plan on November 13, 2019, pursuant to CAO LIS 19-070. In the Facility Plan, the estimated minimum volume that must be hauled off from Defendant's Facility during dry conditions is 35,800 gallons per day (gpd). The Facility Plan is attached as Exhibit 5 and incorporated herein.

17. On December 13, 2019, DEQ informed the City of Bethel Heights by letter that "DEQ has information and documentation showing that pooling and surfacing have continued to occur in spite of corrective actions that are currently being taken by Bethel Heights." The letter also stated, "An analysis of the current rates of wastewater haul off indicates that Bethel Heights is hauling off less wastewater than the Facility Plan recommends." DEQ also requested that Defendant comply with the wastewater haul off volume guidelines in the Facility Plan; enact a seven (7) day per week wastewater haul off plan; and increase the volume of wastewater haul off to stop pooling, surfacing, and ponding in the dispersal fields. That letter is attached as Exhibit 6 and incorporated herein.

18. On December 23, 2019, the City of Bethel Heights submitted its Interim Operation Plan to DEQ, pursuant to CAO LIS 19-070. The City of Bethel Heights was required to include a plan describing the process for daily removal of wastewater from the system in its Interim Operation Plan. The Interim Operation Plan provides an estimated average volume that must be hauled off from Defendant's Facility, assuming that a dewatering system<sup>1</sup> has been installed, of 47,000 gpd. The Interim Operation Plan is attached as Exhibit 7 and incorporated herein.

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<sup>1</sup> DEQ has not received designs, plans or specifications for a "dewatering system," That would be required before DEQA could issue a necessary permit authorizing the installation and operation of a "dewatering system" at Defendant's Facility.

19. On January 8, 2020, DEQ requested by letter that the City of Bethel Heights include with its weekly reports the daily haul off calculations used to determine the haul off amount in accordance with the Haul Off Action Plan. The letter is attached as Exhibit 8 and incorporated herein. To date, Defendant has not provided those calculations. (See Exhibit 4.)

20. On January 15, 2020, the City of Bethel Heights submitted its first monthly Engineering Inspection Report. The Engineering Inspection Report included the following statement, “Phase I-Zone 3A, 3B, 3C, & 1A have are reported to have been out of service for two weeks, however those zones are still ponding.” The first monthly Engineering Inspection Report is attached as Exhibit 9 and incorporated herein.

21. DEQ reviewed Defendant’s weekly progress reports for the period from November 13, 2019 to February 23, 2020. The City of Bethel Heights has reported surfacing at Defendant’s Facility every day from November 13, 2019 to February 23, 2020.<sup>2</sup> (See Exhibit 4.)

22. For the period from November 13, 2019 to February 23, 2020, the City of Bethel Heights has hauled off more than 47,000 gallons of wastewater on twenty-eight (28) days. Those dates are January 8–10, 13–17, 21–24, 27–31, 2020, and February 3–7, 10–11, 19–21, 23, 2020. The volume of wastewater removed for those twenty-eight (28) days did not prevent pooling, ponding, or surfacing at Defendant’s Facility. (See Exhibit 4.)

23. For the period from November 26, 2019 to February 23, 2020, the City of Bethel Heights has failed to comply with CAO LS 19-070, specifically:

- a. the City of Bethel Heights has not taken all measures necessary to prevent pooling, ponding, or surfacing at Defendant’s Facility; and

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<sup>2</sup> February 9, 2020 is the last date for which DEQ has complete information. The City of Bethel Heights submitted reports for the weeks of February 10–16 and 17–23, 2020; however, those reports lacked required information, including invoices from BBB Septic. To date, the City of Bethel Heights has not provided those missing invoices.

- b. the City of Bethel Heights has not implemented the daily removal of a volume of wastewater as estimated in the Facility Plan and in conjunction with the Haul Off Action Plan, as approved by DEQ, and any adjustments based on the monthly Engineering Inspection Report.

**V. VIOLATIONS OF LAW**

- 24. Plaintiff incorporates by reference and realleges paragraphs 1 through 23 of this Complaint.
- 25. Defendant has failed to comply with CAO LIS 19-070.
- 26. Pursuant to Ark. Code Ann. §§ 8-4-103(b)(1)–(3) and 8-4-201, DEQ may initiate civil court actions to enforce orders issued pursuant to the AWAPCA.
- 27. Accordingly, DEQ institutes this civil action to compel compliance with the CAO LIS 19-070, for this court to affirmatively order that the City of Bethel Heights take all actions necessary to prevent pooling, ponding, or surfacing at Defendant’s Facility, and to recover all costs, expenses, and damages to the Division in enforcing or effectuating the provisions of CAO LIS 19-070 and the AWAPCA.

**PRAYER FOR RELIEF**

WHEREFORE, the above premises considered, DEQ respectfully requests that this Honorable Court enforce the Consent Administrative Order by ordering the following:

- (A) Issue an order against the City of Bethel Heights compelling compliance with the requirements contained in CAO LIS 19-070, and specifically, ordering the City of Bethel Heights to:
  - (1) Take all measures necessary to prevent pooling, ponding, or surfacing at Defendant’s Facility; and



- (2) Implement the daily removal of a volume of wastewater as estimated in the Facility Plan and in conjunction with the Haul Off Action Plan, as approved by DEQ, and any adjustments based on the monthly Engineering Inspection Report;
- (B) Render a judgment against the City of Bethel Heights in the amount of Eighty-one Thousand Two Hundred Dollars (\$81,200.00) for the suspended civil penalty assessed by CAO LIS 19-070;
- (C) Award costs and attorney's fees to DEQ; and
- (D) For any and all other relief to which DEQ may be entitled.

Respectfully Submitted,

Division of Environmental Quality

By: 

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## CERTIFICATE OF SERVICE

The undersigned does hereby certify that on March 3, 2020, I did serve a copy of the above on the following individuals by USPS certified mail with a return receipt requested and delivery restricted to the addressee or the agent of the addressee:

Mayor Cynthia J. Black  
City of Bethel Heights  
530 Sunrise Drive  
Bethel Heights, AR 72764



Basil V. Hicks III