

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT  
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Perryville  
P.O. Box 116  
Perryville, AR 72126

LIS No. 20- 179  
Permit No. AR0020125  
AFIN 53-00010

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

The issues herein having been settled by the agreement of the City of Perryville (Respondent) and the Division of Environmental Quality<sup>1</sup> (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 municipal wastewater treatment facility (“facility”) located on East Recreational Drive, Perryville, Perry County, Arkansas.
2. Respondent discharges treated wastewater to the Fourche LaFave River, thence to the Arkansas River in Segment 3E of the Arkansas River Basin.

---

<sup>1</sup> Pursuant to Act 910 of 2019, the Arkansas Transformation and Efficiencies Act, the former Arkansas Department of Environmental Quality is now the Division of Environmental Quality in the newly created Department of Energy and Environment.

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 an 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 AR0020125 (“Permit”) to Respondent on February 4, 2019. The Permit became effective on March 1, 2019, and expires on February 29, 2024.

10. On October 1, 2019, DEQ performed a Reconnaissance Inspection of the facility. The inspection revealed the following conditions that demonstrate improper operation and maintenance of the facility:

- a. Visible solids were passing through the aeration basin, clarifier, and contact basin.
- b. The final effluent was brown in color and appeared to be inadequately treated.

Failure to operate and maintain the facility properly is a violation of Part III, Section B, Condition 1.A of the Permit and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

11. On November 26, 2019, DEQ notified Respondent by letter of the results of the inspection report and requested that Respondent submit a written response to the violations within thirty (30) days of receipt of the letter. Respondent did not submit the requested written response.

12. On January 8, 2020, the Division conducted a review of certified 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 January 1, 2017 through May 31, 2020:

- a. Two (2) violations for Biochemical Oxygen Demand;
- b. Ten (10) violations for Carbonaceous Biochemical Oxygen Demand;
- c. Fourteen (14) violations for Fecal Coliform Bacteria;
- d. Thirteen (13) violations for Dissolved Oxygen;
- e. Thirty-One (31) violations for Total Suspended Solids; and
- f. Sixteen (16) violations for Ammonia Nitrogen.

14. Each of the eighty-six (86) discharge limitation violations listed above constitutes a separate permit violation for a total of eighty-six (86) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

15. DEQ conducted a review of the sanitary sewer overflows (SSOs) and treatment bypasses reported by Respondent in accordance with the Permit for the period of January 1, 2018 through May 31, 2020. The review revealed the following: Respondent reported 18 SSOs. Respondent is permitted to discharge treated municipal wastewater from the permitted outfall at its facility. Respondent is not permitted to discharge untreated wastewater from its collection system. Each SSO constituted an unpermitted discharge. Each unpermitted discharge violated Ark. Code Ann. § 8-4-217(b)(1)(E) and therefore violated Ark. Code Ann, § 8-4-217(a)(3).

16. On January 8, 2020, the Division sent a letter to Respondent requesting that Respondent submit a Corrective Action Plan (CAP) to the Division within thirty (30) days of receipt of that letter.

17. On February 27, 2020, Respondent submitted a CAP to DEQ with a final compliance date of October 31, 2022.

18. On March 3, 2020, DEQ notified Respondent by letter that the CAP was adequate and provided comments.

### **ORDER AND AGREEMENT**

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall comply with the approved CAP and final compliance date of October 31, 2022. The terms, milestone schedule, and final compliance date shall be fully enforceable as terms of this Order.

2. Respondent shall, within ninety (90) calendar days of the effective date of this Order, submit to DEQ, for review and approval, a comprehensive Sanitary Sewer Flow Monitoring and Infiltration and Inflow (I & I) Study ("Study") developed by a Professional Engineer licensed in the state of Arkansas. The Study shall include, at minimum, a baseline for sanitary sewer flows, rainfall monitoring, an estimate of available sewer capacity, identification of sources of I & I, an

estimation of I & I, and a plan and milestone schedule for reducing I & I with a date of final compliance no later than December 31, 2023. The Study shall detail the methods and best available technologies that will be used to correct the violations listed in Findings of Fact Paragraph 15 and prevent future violations. Upon review and approval by DEQ, Respondent shall comply with the terms, milestone schedule, and final compliance date of December 31, 2023. The milestone schedule and final compliance date of December 31, 2023 shall be fully enforceable as terms of this Order.

3. 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 final permitted effluent limits.

4. On or before October 31, 2022, Respondent shall submit the final compliance report, signed and stamped by a Professional Engineer licensed in the State of Arkansas, stating that the facility is in compliance with the permitted discharge limitations set forth in Part 1, Section A of the Permit and with proper operation and maintenance will continue to be in compliance with the permitted discharge limitations set forth in the Permit.

5. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Eight Thousand Four Hundred Dollars (\$8400.00), of which Six Thousand Four Hundred Dollars (\$6400.00) shall be conditionally SUSPENDED by DEQ. The civil penalty of Two Thousand Dollars (\$2000.00) is due within thirty (30) calendar days of the effective date of this Order. Such 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

The suspension and dismissal of civil penalties is contingent upon Respondent complying with the terms of this Order. If Respondent fully complies with this Order, the suspended civil penalty of which Six Thousand Four Hundred Dollars (\$6400.00) shall be DISMISSED by DEQ. If Respondent violates any term of this Order, the full balance of which Eight Thousand Four Hundred Dollars (\$8400.00) shall become immediately due and payable to DEQ. 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

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 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) 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. 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.

13. The City Council of Respondent has authorized the Mayor and City Clerk/Treasurer to sign this Order on behalf of Respondent. See Exhibit A.



14. 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 in this Order. See Exhibit A

SO ORDERED THIS 8th DAY OF October, 2020.

Becky W Keogh  
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

City of Perryville

BY: John Roll  
(Signature)

John Roland  
(Typed or printed name)

TITLE: Mayor

DATE: 9-15-20

**City of Perryville**  
**613 N Fourche Avenue**  
**PO Box 116**  
**Perryville, Arkansas 72126**  
**Phone 501-889-2862**  
**Fax 501-889-2496**  
September 10, 2020  
Minutes of the Regular Meeting

Members:

Brian Hill	Present
Bill Wright	Present
Kevin Brewer	Present
Mandy Gill	Absent
Robert Brazil	Present
Charles Roland	Present

The meeting was called to order by Mayor John Roland.

The first item of business was approval of the minutes for the August 13, 2020 regular meeting. A motion was made by Brian Hill and seconded by Bill Wright to approve the minutes. The motion carried unanimously.

**Input from the Public**

None.

**Mayors Time**

The splash pad will remain open through September in response to requests from the public.

We have installed new flooring and stove in the Community Room.

Work on the new sports complex facility is progressing.

The City received a letter from the Arkansas Department of Environmental Quality, Office of Water Quality regarding violations by the City of the Arkansas Water and Air Pollution Control Act. The sewer plant is rated for 300,000 gallons per day but due to infiltration in the sewer system the plant receives in excess of 800,000 gallons per day when it rains. The City is already working with Crafton and Tull Engineers to develop a plan to make repairs to the sewer system and greatly reduce the infiltration. The City is hoping to receive grants and/or forgivable loans to make the repairs which are currently estimated at approximately \$3,000,000.00. The fine imposed by the Arkansas Energy & Environment is \$8,400.00 of which \$6,400.00 will be suspended with the remaining \$2,000.00 to be paid by September 28, 2020. The repairs to the system need to be completed by December 31, 2023.

The School Resource Officer at the elementary school, Rusty Quinn, approached the Mayor about the drop off / pick up traffic around the elementary school. The traffic is worse than usual

this school year since fewer children are riding the school buses. The issue was tabled until next month in hopes the issue will resolve itself after school has been in session a few more weeks.

Fall Cleanup dates will be October 12 – 23.

**Council Time**

Robert Brazil

Would like to look into an ordinance next spring to address the grass clippings being projected onto the street by mowers.

Motion made by Robert Brazil and seconded by Charles Roland to adjourn. Motion carried unanimously.



Wendy Smithpeters  
Recorder/Treasurer