

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Bay
PO Box 99
Bay, AR 72411

LIS No. 23- **078**
Permit Number: AR0034312
AFIN 16-00151

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 the City of Bay (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 municipal wastewater facility ("Facility") located on Davis St., Bay, Craighead County, Arkansas.
2. Respondent discharges treated wastewater to Ditch No. 6, thence to Gum Slough Ditch, thence to Big Bay Ditch (Ditch No. 10), thence to Straight Slough, thence to St. Francis Bay, thence to Clark Corner Cutoff, thence to the St. Francis River in Segment 5A of the St. Francis 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 AR0034312 ("Permit") to Respondent on October 16, 2018. The Permit became effective on November 1, 2018, and expires on October 31, 2023.

10. Part III, Section D, Condition 10 of the Permit requires the 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, October 31, 2023.

12. On November 1, 2022, February 2, 2023, and February 21, 2023, Respondent was notified that the Permit would expire on October 31, 2023, and that in order to continue the regulated activity, a complete renewal application must be submitted no later than May 4, 2023.

13. DEQ received a Permit renewal application from Respondent on May 15, 2023. DEQ notified Respondent that its application was incomplete and listed the information needed to complete the application in its letter sent on May 16, 2023.

14. DEQ received additional information for Permit renewal application from Respondent on July 10, 2023, and on July 26, 2023. DEQ notified Respondent that its application was administratively complete on July 26, 2023.

15. The complete Permit renewal application was not received by May 4, 2023. Failure to submit the complete Permit renewal application by May 4, 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).

16. On May 19, 2023, DEQ conducted a review of 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, Section A of the Permit from April 1, 2019, through March 31, 2023:

- a. Ten (10) violations of Ammonia Nitrogen;
- b. Two (2) violations of Carbonaceous Biochemical Oxygen Demand; and
- c. One (1) violation of Fecal Coliform Bacteria.

18. Each of the thirteen (13) discharge limitation violations listed in Paragraph 17 above constitutes a separate permit violation for a total of thirteen (13) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

19. The review of the DMRs also revealed that Respondent failed to submit Non-Compliance Reports (NCRs) for effluent violations reported during the following five (5) monitoring periods:

- a. 2019: July;
- b. 2020: April, August; and
- c. 2021: April, May.

Failure to submit a 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).

20. The review of the DMRs further revealed that Respondent failed to submit DMRs by the due date for the following sixteen (16) monitoring periods:

- a. 2019: April, May, July, August, September, October;
- b. 2020: February, March, April, May, June, September; and
- c. 2022: September, November, December; and
- d. 2023: January.

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).

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. On or before the effective date of this Order, Respondent shall certify compliance with the effluent limits set forth in Part I, Section A of the Permit. Alternatively, Respondent shall submit a Corrective Action Plan (CAP) pursuant to Paragraph 4 below.
3. If unable to immediately comply with all permitted effluent limits and certify compliance with the effluent limits set forth in Part I, Section A of the Permit, 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 the Findings of Fact and prevent future violations. The CAP shall also include a reasonable milestone schedule with a date of final compliance no later than June 30, 2026. Upon review and approval by DEQ, Respondent shall comply with the terms, milestone schedule, and final compliance date of June 30, 2026. The milestone schedule and final compliance date of June 30, 2026, shall be fully enforceable as terms of this Order.
4. If Respondent submits a CAP pursuant to Paragraph 4 above, 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 first quarterly progress report shall be due by the fifteenth (15th) of the month following the effective date of this Order and continue each quarter thereafter for a period lasting until this Order is closed. 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 or by June 30, 2026, whichever occurs first.
5. Respondent shall submit all DMRs in accordance with Part III, Section C, Condition 5 of the Permit.

6. On or before the effective date of this Order, Respondent shall submit to DEQ complete NCRs detailing each effluent limit violation and the actions taken to address the effluent limit violations that occurred between July 1, 2019, and May 31, 2021. A separate NCR must be submitted for each monitoring period listed in the Findings of Fact for which a violation of the effluent limits was reported. Respondent shall submit the NCRs to the Enforcement Branch of the DEQ Office of Water Quality via email at water-enforcement-report@adeq.state.ar.us.

7. Respondent shall submit NCRs in accordance with Part III, Section D, Condition 7 of the Permit.

8. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Three Thousand One Hundred Fifty Dollars (\$3150.00), or one-half of the full civil penalty of One Thousand Five Hundred Seventy-five Dollars (\$1575.00) 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. 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 the 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 the 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) 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. This Order has been reviewed and approved by the City Council of Respondent in a duly convened meeting with a quorum present. See the copy of [meeting minutes or resolution] attached as Exhibit A.

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

17. 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 as set forth in this Order. See Exhibit A.

SO ORDERED THIS 16th DAY OF OCTOBER, 2023.



CALEB J. OSBORNE, DIVISION OF ENVIRONMENTAL QUALITY, DIRECTOR
CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

City of Bay

BY: Paul Keith
(Signature)

Paul Keith
(Typed or printed name)

TITLE: Mayor

DATE: 10/9/2023

RESOLUTION NO. 2023-E

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

WHEREAS, it is in the City'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 Mayor and Public Works Director or other 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 CITY COUNCIL OF THE CITY OF Bay:

- 1. The proposed Consent Administrative Order has been reviewed and approved by the City Council in a duly convened meeting with a quorum present.*
- 2. The City Council of the City of Bay authorizes the Mayor to sign the proposed Consent Administrative Order.*
- 3. The City Council of the City of Bay authorizes the Mayor 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 9 day of Oct, 2023

APPROVED: Paul Kalk
Mayor

ATTEST: Diana Martin
City Clerk

