

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Eagle Ridge Utility Operating Company, LLC
Shadow Ridge Wastewater Treatment Facility
500 Northwest Plaza Dr, St 500
St Ann, MO 63074

LIS No. 20- 153
Permit No. AR0050466
AFIN 23-00650

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

The issues herein having been settled by the agreement of the Eagle Ridge Utility Operating Company, LLC (Respondent) and the Division of Environmental Quality¹ (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 the Shadow Ridge Wastewater Treatment Facility (“facility”) located at GPS coordinates 35°07'47.7"N, 92°23'56.6"W near Hikers Cove in Conway, Faulkner County, Arkansas.
2. Respondent discharges treated wastewater to the East Fork of Cadron Creek, thence to the Arkansas River in Segment 3D of the Arkansas River Basin.

¹ 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. On October 10, 2013, DEQ entered into Consent Administrative Order LIS Number 13-170 (CAO 13-170) with the Arkansas Water and Wastewater Corporation concerning the Shadow Ridge Wastewater Treatment Facility.

10. On September 19, 2017, DEQ entered into Consent Administrative Order LIS Number 17-066 (CAO 17-066) with Waste Water Management, Inc., concerning the Shadow Ridge Wastewater Treatment Facility.
11. DEQ issued NPDES Permit Number AR0050466 ("Permit") for the facility on July 6, 2017, with an effective date of August 1, 2017, and an expiration date of July 31, 2022.
12. On December 3, 2018, Respondent submitted a Permit Transfer Form to transfer this facility to Respondent. DEQ issued a minor modification transferring this Permit to Respondent on January 2, 2019, with an effective date of January 7, 2019, and an expiration date of July 31, 2022. DEQ notified Respondent of the Permit transfer on January 3, 2019.
13. On December 3, 2018, , as part of the Permit transfer, Respondent submitted a Corrective Action Plan (CAP) to DEQ for approval.
14. On January 2, 2019, Respondent submitted an amended CAP to DEQ to include a final compliance date of December 31, 2019.
15. On February 11, 2019, DEQ notified Respondent that Respondent's CAP was approved.
16. On April 30, 2019, Respondent submitted a state construction permit application, with additional information submitted on May 13, 2019, in accordance with approved CAP to replace the screen, install fixed film media, increase clarifier size, and install UV disinfection a tablet dechlorinator. Respondent also notified DEQ that when applying the 10 State Standards design criteria, the facility does not have the 39,600 GPD capacity listed in the Permit.
17. On August 19, 2019 Respondent notified DEQ that revisions would be required to the construction permit application.

18. On September 18, 2019, DEQ received a complaint from Faulkner County Office of Emergency Management stating that the facility's septic line was discharging sewage into Cadron Creek.

19. On September 19, 2019, DEQ conducted a Reconnaissance Inspection of the facility in response to the complaint. The inspection revealed the following violations:

- a) The following conditions were present that constitute improper operation and maintenance of the facility:
 - i) Chlorine tablets were not properly positioned and therefore not contacting the effluent for treatment; and
 - ii) The effluent outfall pipe was broken near the receiving stream causing the effluent to pool near the broken pipe before ultimately flowing into Cadron Creek. DEQ observed excessive biological film near the broken outfall pipe in the water flowing to the receiving stream.

These conditions violated Part III, Section B, Condition 1.A of the Permit and are therefore violations of Ark. Code Ann. § 8-4-217(a)(3).

20. On September 23, 2019, DEQ notified Respondent of the September 19, 2019 inspection findings and that the case has been referred directly to the Office of Water Quality Enforcement Branch for further review. On October 23, 2019, Respondent notified DEQ that the broken effluent discharge pipe was addressed by replacing approximately 150 feet of discharge pipe to the outfall. Additionally, Respondent notified DEQ that the following interim measures were undertaken to improve facility performance pending completion of the corrective action plan activities identified in the construction permit application:

- General site cleanup and debris removal
- Sludge pumping and hauling from manholes and influent lift station (approx. 50,000 gal)

- Replaced aeration piping and diffusers
- Installed Mission remote monitoring system
- Installed magnetic flowmeter and tied into Mission remote monitoring system
- Ongoing fencing repairs
- Pumps installed into influent and effluent lift stations

21. On October 4, 2019, Respondent submitted a revised application for a State Construction Permit. That revised application included an evaluation of the existing facility in accordance with 10-State Standards. Based on that evaluation, the design flow capacity of Respondent's existing facility is 0.0225 million gallons per day (MGD). This capacity is less than the design flow rate of 0.0396 MGD that is specified in the Statement of Basis for Respondent's Permit. The design flow rate of 0.0396 MGD provides sufficient capacity to serve Respondent's current 127 sewer connections (124 homes and 3 businesses).² The 0.0225 MGD capacity of Respondent's existing facility does not provide sufficient capacity to serve Respondent's current 127 sewer connections.

22. On November 21, 2019, DEQ informed Respondent by email that the reported flow rates on Respondent's Discharge Monitoring Reports (DMRs) exceed the capacity of the existing facility. DEQ also stated that the facility continues to experience an inability to adequately treat the wastewater based on Respondent's DMRs. DEQ informed Respondent that DEQ would not authorize Respondent to add new sewer connections to the facility until Respondent had completed the corrective action necessary to ensure the facility has the capacity to adequately and effectively treat additional wastewater.

23. On March 30, 2020, DEQ conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent, in accordance with the Permit, from December 1, 2017, through January 31, 2019.

² Using flow values from the Arkansas Department of Health's Rules Pertaining to Onsite Wastewater Systems, Appendix B - Quantities of Wastewater Flow for Various Types of Establishments, the capacity of the facility required to serve 124 residential sewer connections for two bedroom homes is approximately 0.0335 MGD.

24. 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 December 1, 2017, through January 31, 2019:

- a. Thirteen (13) violations for Carbonaceous Biochemical Oxygen Demand (CBOD);
- b. Seven (7) violations for Fecal Coliform Bacteria;
- c. Seventeen (17) violations for Ammonia Nitrogen;
- d. Thirteen (13) violations for Total Suspended Solids (TSS).

25. Each of the 50 discharge limitation violations listed in Paragraph 23 above constitutes a separate permit violation for a total of 50 separate violations of Ark. Code Ann. § 8-4-217(a)(3). Permit effluent violations for TSS, Ammonia Nitrogen, Dissolved Oxygen, and pH were referenced in CAO LIS 13-170. Permit effluent violations for TSS, Ammonia Nitrogen, Fecal Coliform Bacteria, Biochemical Oxygen Demand, and pH were referenced in CAO LIS 17-066. Both, CAO LIS 13-170 and CAO LIS 17-066 were executed prior to the Permit being transferred to Respondent.

26. On March 30, 2020, DEQ conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent, in accordance with the Permit, from February 1, 2019, through March 30, 2020.

27. 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 February 1, 2019, through March 30, 2020:

- a. Thirty-two (32) violations for CBOD;
- b. Two (2) violation for Fecal Coliform Bacteria;

- c. Forty-four (44) violations for Ammonia Nitrogen;
- d. Two (2) violations for Dissolved Oxygen (DO); and
- e. Fifty-seven (47) violations for TSS.

28. Each of the 127 discharge limitation violations listed in Paragraph 23 and Paragraph 26 above constitutes a separate permit violation for a total of 127 separate violations of Ark. Code Ann. § 8-4-217(a)(3). Permit effluent violations for TSS, Ammonia Nitrogen, DO, and pH were referenced in CAO LIS 13-170. Permit effluent violations for TSS, Ammonia Nitrogen, Fecal Coliform Bacteria, Biochemical Oxygen Demand, and pH were referenced in CAO LIS 17-066. Both, CAO LIS 13-170 and CAO LIS 17-066 were executed prior to the Permit being transferred to Respondent.

ORDER AND AGREEMENT

WHEREFORE, Respondent, neither admitting nor denying the statements in the Findings of Fact, and DEQ stipulate and agree as follows:

1. Upon the effective date of this Order, CAO LIS 13-170 and CAO LIS 17-066 shall be closed.
2. Respondent shall achieve compliance with the effluent limitations in the Permit no later than twelve (12) months from the effective date of a State Construction Permit.
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 Permit. Respondent shall submit a final compliance report no later than the final compliance date.

5. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Nine Thousand Six Hundred Dollars (\$9600.00), of which Seven Thousand Two Hundred Dollars (\$7200.00) shall be conditionally SUSPENDED by DEQ. If Respondent fully complies with this Order, the suspended civil penalty of Seven Thousand Two Hundred Dollars (\$7200.00) shall be DISMISSED by DEQ. The suspension and dismissal of civil penalties is contingent upon Respondent complying with the terms of this Order. If Respondent violates any term of this Order, the full balance of Nine Thousand Six Hundred Dollars (\$9600.00) shall become immediately due and payable to DEQ on demand. Payment of the unsuspended penalty of Two Thousand Four Hundred Dollars (\$2400.00) 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.

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 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 Regulation No. 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 Regulation No. 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. By virtue of the signature appearing below, the individual represents that he or she is a Managing Member of Respondent, being duly authorized to execute and bind Respondent to the terms contained herein as attested by the secretary of that entity. Execution of this Order by an individual other than a Managing Member of Respondent shall be accompanied by a resolution granting signature authority to that individual as duly ratified by the governing body of the entity.

SO ORDERED THIS 2nd DAY OF June, 2020.

Becky W Keogh
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

Eagle Ridge Utility Operating Company, LLC

BY: [Signature]
(Signature)

Joseph Cox
(Typed or printed name)

TITLE: President

DATE: 6/2/2020