

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Marion
P.O. Box 717
Marion, AR, 72364

LIS No. 24-
Permit No. AR0021971
AFIN 18-00110

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 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 Marion (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 major municipal wastewater treatment facility (“facility”) located at 5054 Hardin Road, Marion, Crittenden County, Arkansas.
2. Respondent discharges treated wastewater to the Mississippi River in Segment 6C of the Mississippi 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 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 AR0021971 (“Permit”) to Respondent on August 28, 2017. The Permit became effective on October 1, 2017, and expired on September 30, 2022.

Late Permit Renewal Application

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, September 30, 2022.

12. On October 4, 2021, and January 5, 2022, Respondent was notified that the Permit would expire on September 30, 2022, and that in order to continue the regulated activity, a complete renewal application must be submitted no later than April 3, 2022.

13. On April 4, 2022, DEQ received a Permit renewal application from Respondent. DEQ notified Respondent that the application was incomplete and requested additional information on April 6, 2022, April 27, 2022, and May 12, 2022. Each of these letters listed the information needed to complete the application.

14. Respondent submitted the requested information on May 11, 2022, and June 1, 2022. On June 7, 2022, DEQ notified Respondent that the Permit renewal application was deemed administratively complete on June 1, 2022.

Inspection

15. On September 8, 2022, DEQ conducted a routine compliance evaluation inspection of the facility. The inspection revealed the following violations:

- a. On September 1, 2021, the percent removal testing conducted for Biochemical Oxygen Demand (BOD) determined a removal percentage of eighty-four percent (84%), failing to meet the thirty (30) day average of eighty-five percent (85%). This failure is a violation of Part II, Condition 2 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
- b. The following conditions are violations Part III, Section B Condition 1.a of the Permit and therefore are violations of Ark. Code Ann. § 8-4-217(a)(3).
 - i. Deposited sediment was observed near the aeration wheel.

- ii. High vegetation was observed on lagoon levees.
 - iii. Algae was observed in the chlorine contact chamber.
 - c. Respondent reported incorrect BOD data on the May 2022 Discharge Monitoring Report (DMR) in violation of Part II, Condition 2 of the Permit and therefore in violation of Ark. Code Ann. § 8-4-217(a)(3).
 - d. Respondent reported incorrect Fecal Coliform Bacteria (FCB) data on the July 2022 DMR as a result of improper calculations in violation of Part IV, Condition 15 of the Permit and therefore in violation of Ark. Code Ann. § 8-4-217(a)(3).
- 16. On December 30, 2022, DEQ notified Respondent of the inspection results via letter and requested a written response addressing the violations be submitted to DEQ by January 20, 2023.
- 17. On January 18, 2023, Respondent submitted a written response to the September 8, 2022 inspection.
- 18. On May 25, 2023, DEQ notified Respondent that the inspection response was sufficient.

DMR Violations

- 19. On May 11, 2023, DEQ conducted a review of the Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.
- 20. 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, 2020 through March 31, 2023:
 - a. Twenty-five (25) violations of Carbonaceous Biochemical Oxygen Demand;
 - b. Three (3) violations of Fecal Coliform Bacteria; and
 - c. Three (3) violations of pH.

21. Each of the thirty-one (31) discharge limitation violations listed in Paragraph 20 above constitutes a separate permit violation for a total of thirty-one (31) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

22. The review of the DMRs revealed that Respondent failed to submit Non-Compliance Reports (NCRs) for effluent violations reported during the following twelve (12) monitoring periods.

a. 2021: June; September; October; November; December; and

b. 2022: January; February; March; April; May; July; December.

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).

23. The review of the DMRs further revealed that Respondent failed to submit DMRs by the due date for the following four (4) monitoring periods:

a. 2021: March, April, May, June.

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).

24. On May 15, 2023, DEQ sent Respondent a letter requesting a Corrective Action Plan (CAP) to address the violations of the permitted effluent discharge limitations. The CAP was to have a milestone schedule, final date of compliance, and be certified by a Professional Engineer (P.E.) licensed in the state of Arkansas.

25. On June 9, 2023, Respondent submitted a CAP to DEQ. The CAP included a final compliance date of July 31, 2026. DEQ reviewed and approved the CAP with the following comments:

- a. Respondent must obtain a State Construction Permit prior to beginning construction.
- b. If construction disturbs five (5) acres or more, Respondent must obtain coverage under the Stormwater Construction General Permit.

26. On October 13, 2023, DEQ conducted a second review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.

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 April 1, 2023, through September 30, 2023.

- a. Five (5) violations of Carbonaceous Biochemical Oxygen Demand; and
- b. One (1) violation of Total Suspended Solids.

28. Each of the six (6) discharge limitation violations listed in Paragraph 27 above constitutes a separate permit violation for a total of six (6) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

29. The review of the DMRs revealed that Respondent failed to submit Non-Compliance Reports (NCRs) for effluent violations reported during the following two (2) monitoring periods:

- a. 2023: May, June.

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).

30. The review of the DMRs further revealed that Respondent failed to submit DMRs by the due date for the following two (2) monitoring periods:

2023: July, August.

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).

31. The review of the DMRs also revealed that Respondent failed to conduct analysis for the monitoring periods ending June 30, 2023. Failure to monitor the effluent in accordance with the requirements set forth in Part I, Section A of the Permit is a violation of Part I, Section A of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

32. DEQ conducted a review of the SSOs reported by Respondent in accordance with the Permit for the period of January 1, 2020 through September 30, 2023. The review revealed that Respondent reported one (1) Sanitary Sewer Overflow (SSO). Respondent is permitted to discharge treated municipal wastewater from its permitted outfall. Respondent is not permitted to discharge untreated wastewater from its collection system. The SSO constituted an unpermitted discharge. The unpermitted discharge violated Ark. Code Ann. § 8-4-217(b)(1)(E), and therefore violated Ark. Code Ann. § 8-4-217(a)(3).

33. On January 30, 2024, DEQ conducted another review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.

34. 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 October 1, 2023, through December 31, 2023:

- a. Three (3) violations of Carbonaceous Biochemical Oxygen Demand.

35. Each of the three (3) discharge limitation violations listed in Paragraph 20 above constitutes a separate permit violation for a total of three (3) separate violations 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 the effective date of the permit renewal.
2. Respondent shall comply with the terms, milestone schedule, and final compliance date of July 31, 2026, contained in the approved CAP submitted on June 9, 2023. The milestone schedule and final compliance date 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 permitted effluent limits set forth in Part I, Section A of the Permit. 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.
4. Within sixty (60) calendar days of the effective date of this Order, and each quarter thereafter for a period of one year, Respondent shall sample and analyze the influent and effluent to determine the percent removal efficiency for BOD. The results of each sampling event shall be submitted to the DEQ Office of Water Quality via email at water-enforcement-report@adeq.state.ar.us.
5. On or before the effective date of this Order, Respondent shall submit to DEQ complete NCRs for each month listed in Paragraph 29, detailing each effluent discharge limit violation and the actions taken to address each violation. A separate NCR must be submitted for each monitoring period listed in the Findings of Fact. Respondent shall submit the completed NCRs to the Enforcement Branch of the DEQ Office of Water Quality via email at water-enforcement-report@adeq.state.ar.us.

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

7. Respondent shall submit all DMRs in accordance with Part III, Section C, Condition 5 of the Permit.

8. Within thirty (30) calendar days of the effective date of this Order, Respondent shall submit to DEQ for review and approval its process for identifying instances of non-compliance that must be reported on DMRs, including the process and protocols for identifying and reporting Sanitary Sewer Overflows (SSOs), and its process for determining the appropriate corrective actions for those instances of noncompliance.

9. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Seven Thousand Fifty Dollars (\$7050.00). 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:

DEQ, 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

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

18. 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 _____ DAY OF _____, 2024.

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

APPROVED AS TO FORM AND CONTENT:

City of Marion

BY: _____
(Signature)

(Typed or printed name)

TITLE: _____

DATE: _____