

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Black Rock
491 Elm St
Black Rock, AR 72415

LIS No. 19- 125
Permit No. AR0037508
AFIN 38-00034

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (“Order”) is issued pursuant to the authority of the Arkansas Water and Air Pollution Control Act (“the 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 City of Black Rock (“Respondent”) and the Division of Environmental Quality¹ (DEQ or “Division”), 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 wastewater treatment facility (“Facility”) located on Bonita Road, in the city of Black Rock, in Lawrence County, Arkansas.
2. Respondent discharges treated wastewater to unnamed tributary of the Black River, thence to the Black River, thence to the White River in Segment 4G of the White River Basin.
3. Respondent is regulated pursuant to the National Pollutant Discharge Elimination System (NPDES).

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.

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 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, regulation, 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 regulation 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. The Division issued NPDES Permit Number AR0037508 (“Permit”) to Respondent on December 8, 2014. The Permit became effective on January 1, 2015, and expires on December 31, 2019.

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, December 31, 2019.
12. On January 3, 2019, and April 4, 2019, Respondent was notified by letter that the Permit would expire on December 31, 2019, and that in order to continue the regulated activity, a complete renewal application must be submitted no later than July 4, 2019.
13. On June 25, 2019, DeClerk-Throesch Engineering, on behalf of Respondent, submitted a notice that they would not be able to submit the application until August 16, 2019.
14. On June 25, 2019, DEQ responded to the request, and DeClerk Throesch Engineering, on behalf of Respondent, agreed to submit a renewal application without the testing data before July 4, 2019.
15. On July 3, 2019, an incomplete permit renewal application was submitted to the Division.
16. On July 9, 2019, the Division notified Respondent in a letter that the permit renewal application was incomplete.
17. Respondent submitted additional information on September 6, 2019.
18. On September 11, 2019, the Division notified Respondent by letter that the permit renewal application was administratively complete.
19. The complete Permit renewal application was not received by July 4, 2019. Failure to submit the Permit renewal application within 180 days of the expiration of the Permit is a violation of Part III, Section D, Condition 10 of the Permit and therefore 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 Permit until either the effective date of the permit renewal or the date of the permit termination.
2. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of One Thousand Dollars (\$1,000.00), or one-half of the full civil penalty of Five Hundred Dollars (\$500.00) 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. Such 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.

3. Failure to meet any requirement or deadline of this Order constitutes a violation of said 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 which may be available to DEQ by reason of failure by Respondent to comply with the requirements of this Order.

4. If any event, including but not limited to an act of nature, occurs which 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.

5. 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.

6. 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.

7. 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-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.

8. 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.

9. 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.

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

11. 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 19th DAY OF December, 2019.

Becky W. Keogh
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

City of Black Rock

BY: S. J. Cokey
(Signature)

SARAH J. COKEY
(Typed or printed name)

TITLE: Treasurer

DATE: 12/10/2019

City of Black Rock, Arkansas
Special Emergency Council Meeting
December 9, 2019

Black Rock City Council met in special session on December 9, 2019 at 7:00 PM. Those present were Mayor Ragsdale, Recorder/Treasurer Sarah Gokey, Aldermen Linda Robertson, Pat Roby, Greg Hall, and Harold Willett. City employees Darlene Schmidt and William Wilson, and City Attorney Ryan Cooper. A quorum was established.

Mayor Ragsdale called the meeting to order.

Mayor advised the council and all present that this special council meeting was called to address NPDES Violation for the City of Black Rock for permit #AR0037508.

The Mayor asked city employee, Darlene Schmidt, who holds the current City of Black Rock Water License, and who is the current point of contact on this issue, to address the council and brief them on this issue.

Darlene briefed the council on the procedures of the required testing for waste water discharge testing; permit renews every five years, 3 samples of discharge must be taken over the five year period, samples must be submitted with a minimum of two week span between samples, all samples must be submitted prior to 180 days before the year end of permit renewal.

Darlene explained in detail that we received a letter in January 2019 explaining to the city that our permit would expire this year (2019) and that our samples and application would be require to be submitted by July 3, 2019 and processed through Ben DeClerk, the engineer representing the City of Black Rock. Darlene explained that the samples and application must be provided using an engineer, in the city's case that is Ben DeClerk. She continued, that the step by step process requires the waste water manager to notify the lab to come to Black Rock and take the sample, that sample is then submitted for testing through the engineer and reported back with the application to the NPDES/ADEQ processes.

Darlene reported that the lab and the City of Black Rock were notified again in May that the Black Rock samples/application were due by July 3, 2019. The waste water manager at that time, Herschel Meeks, coordinated with the lab to have samples drawn on June 29, 2019, July 18, 2019 and August 4, 2019: with two of the three samples being taken and tested past the city's application deadline of July 3, 2019. These actions have caused the delay in approval of the city's permit and fines that must be paid by the deadlines described in the certified letter the city received that also included a copy of the affidavit further describing the penalties.

She continued updating the council detailing that the City of Black Rock received a letter in October 2019, stating that the city was current and compliant administratively since three samples were on file, however, that a permit would not be issued to the city at that time because the city was in violation of the terms of the permit due to delayed and late sample submissions.

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City of Black Rock, Arkansas

Special Emergency Council Meeting

December 9, 2019

Darlene explained that in order to receive consideration for permit renewal it required a special meeting for council to vote on a resolution to approve payment of fines, acceptance of their understanding what procedures lead to the loss of permit and fines imposed, and what procedures would be put in place to prevent future loss of permit and/or fines, to ensure the city of Black Rock stays compliant.

City Attorney Ryan Cooper read aloud the letter the city received regarding this issue; a copy of this letter will be held in file with the waste water manager and/or water departments files, for record and review. This letter contains all explanations in detail of loss of permit, fines enforced, and terms of possible settlement of said violations and restitution.

The Mayor read emails that transpired with Darlene and Merle, the representative for the city at ADEQ, to further update the council of all areas that the city has been guided through in order to resolve this issue, as well as the city's explanation to ADEQ of the errors that led to his violation, and how the city is expected to resolve this issue. These emails will be kept on file with all documents pertaining to this issue for any further review. As well, Darlene reviewed the chain of custody for all materials and samples, reports, regarding this issue; these will also be kept on file for future review.

There was some discussion between the Mayor, the Council and Darlene regarding the step by step process previously used that led to this violation. The Council agreed to an understanding of the processes that led to this issue and violation, that included a disregard by the previous waste water manager of a direct request by the Mayor the first week of June 2019 to start the testing process to meet the July, 3 2019 deadline for the application.

The Mayor explained that the resolution being proposed to prevent any further violations will include a two-point contact process. She explained that by the end of 2020 Darlene and William will also have obtained their waste water license; and that Darlene and William Wilson will be the two point contact team for ADEQ, Ben DeClerk, and the lab.

The Mayor explained that the City of Black Rock has been late with their application process both times required of the last ten years. Also, there is a requirement of a report being filed every month in addition to this five-year application, and that all of those reports are current and have been filed on time.

There was some discussion among the Council, the Mayor, Darlene, and the City Attorney, in the understanding of the requirements to resolve this issue; did the city need a resolution, council minutes, or both. Also, if the fine is paid within the twenty-day period was it \$500.00 or \$1000.00. They also discussed the date of the letter (November 15, 2019), and the date they received/reviewed it of December 2, 2019 via certified mail. It was asked who signed for it and it was stated by Darlene and the Mayor that they did not, and they are not sure who signed for the certified letter.

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After further review of the letter and the legal affidavit by the council and the city attorney, it was determined that the City of Black Rock would submit both the council minutes and a resolution, all paperwork required to be signed by the Mayor and the Treasurer then notarized, and as their understanding by all documents read, file all paperwork, then accept the fine; be it \$500.00 or \$1000.00 to be paid upon the final determination by NPDES, that would be forwarded to the city at a later date by NPDES, and that the fine denomination is based on acceptance of processed followed and the date of the processes, and cannot be finalized today. However, the council did agree to accept and approve payment of the fine up to \$1000.00.

Darlene then read the resolution; 004-2019. Motion to accept resolution made by Alderman Willet, seconded by Alderman Robertson; motion carried.

Alderman Robertson made motion to adjourn. It was seconded by Alderman Hall; and motion carried.

MAYOR



RECORDER



RESOLUTION #004-2019

A RESOLUTION TO ACCEPT THE TERMS OF PURPOSED CONSENT ADMINISTRATIVE ORDER IN REFERENCE TO THE BLACK ROCK WATER AND SEWER NPDES PERMIT #AR 0037508 VIOLATION.

Whereas, We the City Council of Black Rock Arkansas authorize the Mayor to issue funds consistent with the Agreement of the order be it \$500.00 or \$1000.00.

Whereas. The Resolution to accept the terms of proposed consent administrative order in reference to the NPDES Application violation has passed, in addition, we agree to undertake the measures discussed to ensure future compliance.

THEREFORE, THIS RESOLUTION ADOPTED IN SPECIAL SESSION THIS THE 9TH DAY OF DECEMBER 2019.

APPROVED Bonnie Ragade Mayor

ATTEST AJoly Treas/Recorder