

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Little Rock
Little Rock Zoological Gardens
1 Zoo Drive
Little Rock, AR 72205

LIS No. 20- 167
Permit No. AR0037745
AFIN 60-00670

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 City of Little Rock- Little Rock Zoological Gardens (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 a zoological garden (“facility”) located at 1 Zoo Drive in Little Rock, Pulaski County, Arkansas.

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.

2. Respondent discharges treated washwater and stormwater runoff to Coleman Creek, thence into Fourche Creek, thence into the Arkansas River in Segment 3C of the Arkansas 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 AR0037745 ("Permit") to Respondent on November 24, 2015. The Permit became effective on December 1, 2015, and expires on November 30, 2020.

10. Pursuant to Part 1, Section A of the Permit, Respondent is responsible for submitting the following DMRs:

- a) 002-A Once a month
- b) 004-A Once a month
- c) 002-Q Once a quarter
- d) 004-Q Once a quarter
- e) 002-F Once a quarter
- f) 004-F Once a quarter

11. On December 9, 2019, DEQ conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.

12. The review revealed that Respondent had reported the following violations of the permitted effluent discharge limits detailed in Part I, Section A of the Permit from November 1, 2016, through October 31, 2019:

- a) Eight (8) violations of Total Suspended Solids;
- b) Four (4) violations of Fecal Coliform Bacteria;
- c) One (1) violation of Chemical Oxygen Demand; and
- d) One (1) violation of Dissolved Oxygen.

13. Each of the fourteen (14) discharge limitation violations listed in Paragraph 11 above constitutes a separate permit violation for a total of fourteen (14) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

14. The review also revealed that Respondent had submitted over eighty (80) DMRs past the due date from November 1, 2016 through October 31, 2019. This is a violation of Part III, Section C, Condition 5 of the Permit and therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

15. At the time of the review, Respondent had not submitted the quarterly DMRs ending June 30, 2019.

16. On December 10, 2019, DEQ sent Respondent a letter requesting a Corrective Action Plan (CAP) to address the violations of the permitted effluent limitations. The CAP was to have a milestone schedule, a final date of compliance, and be certified by a Professional Engineer licensed in the state of Arkansas. DEQ also informed Respondent of the number of violations for late DMR submittals.

17. On January 3, 2020, DEQ informed Respondent by letter that DMRs 002-Q and 004-Q, with the monitoring period end date of June 30, 2019, had not been submitted.

18. On January 8, 2020, Respondent submitted the quarterly DMRs 002-Q and 004-Q, with the monitoring period end date of June 30, 2019, to DEQ.

19. On February 5, 2020, Respondent submitted a CAP to DEQ with a final compliance date of December 31, 2021. The CAP included protocols and procedures that Respondent had implemented to address the late submittal of DMRs.

20. On February 10, 2020, DEQ sent Respondent a letter approving the CAP submitted on February 5, 2020.

21. On February 26, 2020, DEQ conducted a follow up review of the certified DMRs submitted by Respondent in accordance with the Permit since the initial December 9, 2019 review:

22. The review revealed that Respondent had reported the following violations of the permitted effluent discharge limits detailed in Part I, Section A of the Permit:

- a) Six (6) violations of Total Suspended Solids; and
- b) Five (5) violations of Fecal Coliform Bacteria.

23. Each of the eleven (11) discharge limitation violations listed above constitutes a separate permit violation for a total of eleven (11) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

24. The review also revealed that Respondent had submitted four (4) DMRs past the due date since the initial December 9, 2019 review. This is a violation of Part III, Section C, Condition 5 of the Permit and therefore Ark. Code Ann. § 8-4-217(a)(3).

25. The review also revealed that Respondent had not submitted Non-Compliance Reports (NCRs) for the violations reported for the following DMR Monitoring Period End Dates :

- a) 06-30-2019 002-Q;
- b) 06-30-2019 004-Q;
- c) 03-31-2019 002-Q; and
- d) 03-31-2019 004-Q.

Failure to submit NCRs is a violation of Part III, Section D, Conditions 6 and 7 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

26. On May 21, 2020, DEQ and Respondent held a meeting via Zoom Video Communications to discuss the violations and that DEQ was drafting an Order to address those violations.

27. On July 24, 2020, Respondent submitted the missing NCRs referenced in Paragraph 25 above.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall continue to implement the approved CAP in accordance with the milestone schedule contained in the CAP submitted to DEQ on February 5, 2020. The approved CAP, the milestone schedule, and final compliance date of December 31, 2021, shall be fully enforceable as terms of this Order.
2. Respondent shall submit DMRs in accordance with Part III, Section C, Condition 5 of the 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 final permitted effluent limits set forth in Part I, Section A of the Permit. Respondent shall submit the final compliance report by December 31, 2021.
4. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Four Thousand Three Hundred Fifty Dollars (\$4350.00), or one-half of the full civil penalty of Two Thousand One Hundred Seventy-Five Dollars (\$2175.00) 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:

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.

5. 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.

6. 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.

7. 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.

8. 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 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.

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. Each of the undersigned representatives of the parties certifies that he or she is authorized to execute this Order and to legally bind that party to its terms and conditions.

SO ORDERED THIS 13th DAY OF August, 2020.

Becky W. Keogh
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

City of Little Rock- Little Rock Zoological Gardens

BY: SJA B.T. Moore
(Signature)

Susan Altrui BRUCE T. MOORE
(Typed or printed name)

TITLE: Zoo Director CITY MANAGER

DATE: 7/30/2020 7/30/2020