

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Entergy Arkansas, LLC
425 West Capitol Avenue
Little Rock, AR 72203

LIS No. 21- 083
AFIN 30-00011
AFIN 30-00203
AFIN 37-00004

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 Entergy Arkansas, 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 Power Generation facilities in Arkansas:
 - a. Lake Catherine Plant located at 141 West County Line Road, Malvern, Hot Spring County, AFIN 30-00011;
 - b. Carpenter Dam located at 399 Powerhouse Lane, Hot Springs, Garland County, AFIN 30-00203;

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.

- c. Harvey Couch² located at 547 Highway 82 East, Stamps, Lafayette County, AFIN 37-00004;
 - d. Remmel Dam located at 1282 Remmel Dam Road, Malvern, Hot Spring County, AFIN 26-00358;
 - e. Union Power Station located at 6497 Calion Highway, El Dorado, Union County, AFIN 70-00543; and
 - f. White Bluff Plant located at 1100 White Bluff Road, Redfield, Jefferson County, AFIN 35-00110.
2. DEQ is authorized under Ark. Code Ann. § 8-4-101 *et seq.*, and APC&EC Rule 17: Arkansas Underground Injection Control (UIC) Code to issue permits for Class V Injection Wells, which includes septic system wells used to inject the waste or effluent from a multiple dwelling, business establishment, community, or regional business establishment septic tank. Septic systems are also subject to regulation by the Arkansas Department of Health (ADH) pursuant to Act 204 of 1997, Arkansas Code Annotated § 14-236-101 *et seq.*, and the Rules Pertaining to Onsite Wastewater Systems promulgated by the Arkansas State Board of Health.
3. The Safe Drinking Water Act, which includes Underground Injection Control provisions found at 40 C.F.R. §§ 144–148, was passed by Congress in 1974.
4. Arkansas was delegated the authority to administer the Underground Injection Control program in 1982.
5. The UIC program, specifically 40 C.F.R. § 144.83, provides that preexisting facilities were to provide basic inventory information.
6. Ark. Code Ann. § 8-4-217(a)(3) provides:

² Harvey Couch has been out of operation since December 9, 2014. Today there is an Entergy substation co-located with the former electricity production unit.

(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(a)(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), “Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment.”

9. Respondent conducts voluntary Safety, Health, Environmental, and Management System Audits (“SHEMS Audit”) of its facilities to identify and correct potential items of noncompliance before any impact occurs from the potential noncompliance.

10. Respondent conducts SHEMS Audits across its Power Generation facilities on a regular basis but the specific timing of an individual facility audit is unknown to the facility to be inspected until approximately two (2) weeks before the audit panel arrives on site.

11. During the most recent SHEMS Audit of the Lake Catherine Steam Electric Station (“Lake Catherine”), Respondent’s audit panel identified a potential noncompliance related to the septic system at the Lake Catherine facility. Specifically, the septic system at the Lake Catherine facility is not permitted by DEQ as required by APC&EC Rule 17. The septic system at the Lake Catherine facility predates the requirements of the UIC program.

12. As a result of the SHEMS Audit at the Lake Catherine facility, Respondent has undertaken an internal review of Respondent’s other facilities in Arkansas to determine the potential presence of septic systems at those facilities.

13. Through a preliminary review of Respondent's Arkansas facilities, Respondent was able to eliminate several facilities from further evaluation. Respondent identified the following facilities as those with potential presence of septic systems: Carpenter Dam (AFIN 30-00203), Harvey Couch (AFIN 37-00004), Rimmel Dam (AFIN 26-00358), Union Power Station (AFIN 70-00543), and White Bluff Plant (AFIN 35-00110).

14. Respondent hired a third-party engineering firm to complete a full review of the facilities referenced in Paragraph 13 to determine the applicability of APC&EC Rule 17 to any septic systems that may be present at those facilities.

15. On November 6, 2020, Respondent provided DEQ with initial notice of the potential noncompliance. Respondent has periodically updated DEQ via conference call on the progress of the third-party investigation.

16. Respondent reviewed their records and were not able to locate basic inventory information for the facilities referenced in Paragraph 1 where septic systems may be located.

17. DEQ reviewed their records and were not able to locate basic inventory information for the facilities referenced in Paragraph 1 where septic systems may be located.

18. On February 16, 2021, Respondent submitted to DEQ a Compliance Plan with the following:

- a. A third-party engineering firm will conduct on-site investigations of the physical assets located at Carpenter Dam (AFIN 30-00203), Harvey Couch (AFIN 37-00004), Rimmel Dam (AFIN 26-00358), and Union Power Station (AFIN 70-00543).
- b. An ADH Designated Representative will assist in evaluating the compliance obligations to ADH associated with the septic tanks located at the facilities.

- c. The third-party engineer and Designated Representative may recommend maintenance, repairs, or a combination thereof to the identified septic systems.
 - d. The Designated Representative will prepare and submit any necessary permit applications to the ADH.
19. As a result of these on-site investigations conducted pursuant to Respondent's February 16, 2021 Compliance Plan, Respondent has completed the following:
- a. Respondent identified two (2) facilities, the Lake Catherine Plant (AFIN 30-00011) and the Union Plant (AFIN 70-00543), as potentially regulated under APCE&C Rule 17.
 - b. Respondent determined that the Lake Catherine Plant (AFIN 30-00011) and the Union Plant (AFIN 70-00543) were the only facilities that require a No Discharge Permit for operation.
 - c. On April 28, 2021, Respondent submitted the initial No Discharge Permit applications for the Lake Catherine Plant (AFIN 30-00011) and the Union Plant (AFIN 70-00543).
 - d. Following the third-party engineering firm's recommendations and the recommendation by the ADH Designated Representative, Respondent has undertaken certain repairs in coordination with ADH and DEQ at several sites. Based on the requirements of ADH, written disclosure to DEQ dated April 14, 2021, and with the consent of DEQ, Respondent has undertaken repairs to the existing systems at the Lake Catherine Plant (AFIN 30-00011) and the Union Plant (AFIN 70-00543) prior to receiving the applied-for No Discharge Permits.

- e. Respondent applied for and received all necessary permits from ADH authorizing repairs and/or replacement at Respondent's facilities in accordance with the requirements of ADH. ADH issued each necessary permit within ten (10) days of the associated application.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall obtain the applied-for No Discharge Permits for the Lake Catherine Plant (AFIN 30-00011) and the Union Plant (AFIN 70-00543) and comply with the terms of those permits. In the interim, Respondent shall comply with the requirements of the DEQ UIC program, APC&EC Rule 17, and any septic system requirement of ADH for each septic system it operates.
2. 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.

3. 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 ADEQ, 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.

4. 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.

5. 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.

6. This Order is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d) and APC&EC Rule 8. This Order is effective upon the Director's signature. 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.

7. 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.

8. 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 said 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 said individual as duly ratified by the governing body of the entity.

SO ORDERED THIS 25th DAY OF August, 2021.



BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

Entergy Arkansas, LLC

BY: 
Beverley Gale (Aug 5, 2021 08:05 CDT)

(Signature)

Beverley Gale

(Typed or printed name)

TITLE: VP, Power Plant Operations – EAL

DATE: Aug 5, 2021