

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Arkansas Department of Corrections
Cummins Unit
P.O. Box 8707
Pine Bluff, AR 71603

LIS No. 22- **063**
Permit No. AR0040827
AFIN 40-00016

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 Arkansas Department of Corrections (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 non-municipal wastewater treatment facility ("facility") located at 2540 State Highway 388, Gould, Lincoln County, Arkansas.
2. Respondent discharges treated wastewater to Canal #19 (aka Cypress Creek), thence to the Bocuf River in Segment 2A of the Ouachita 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. DEQ issued NPDES Permit Number AR0040827 ("Permit") to Respondent on September 4, 2019. The Permit became effective on October 1, 2019, with a minor modification on November 1, 2019, and expires on September 30, 2024.
10. On December 2, 2019, DEQ met with Respondent and McClelland Consulting Engineers to discuss violations at the facility and the corrective actions taken to resolve the violations.

Respondent stated they were in the process of significant rehabilitation including ultraviolet disinfection, paddle wheels, and aeration.

11. On August 13, 2021, DEQ conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit. 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 August 1, 2018, through June 30, 2021:

- a. Seventeen (17) violations of Carbonaceous Biochemical Oxygen Demand;
- b. Fifteen (15) violations of Fecal Coliform Bacteria;
- c. Thirteen (13) violations of Ammonia Nitrogen;
- d. Twelve (12) violations of Oil and Grease;
- e. Eight (8) violations of Dissolved Oxygen; and
- f. Thirty-four (34) violations of Total Suspended Solids.

12. Each of the ninety-nine (99) discharge limitation violations listed in Paragraph 11 above constitutes a separate permit violation for a total of ninety-nine (99) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

13. The review of the DMRs also revealed that inadequate Non-compliance Reports (NCRs) were submitted during the period from August 1, 2018, through June 30, 2021. The equipment repair and replacement and the corrective actions taken thus far have been insufficient to address the violations and prevent recurrence.

14. On August 13, 2021, DEQ requested by email that Respondent submit a Corrective Action Plan (CAP) to DEQ on or before September 17, 2021. The CAP was to include a facility evaluation, corrective actions, a reasonable milestone schedule, a date of final compliance, and be certified by a Professional Engineer (P.E.) licensed in the state of Arkansas.

15. On September 15, 2021, Respondent submitted, through its engineer, a CAP detailing the corrective actions to be taken to address the effluent violations at the facility. The CAP contained a milestone schedule with a final compliance date of March 29, 2024.

16. On September 29, 2021, DEQ sent Respondent a letter approving the CAP submitted on September 15, 2021, with the following comments:

- a. Pursuant to APC&EC Rule 6.202(A), "Any person who desires to construct, operate or modify any disposal system which will discharge to the waters of the State . . . shall submit an application for a permit for such activity."
- b. Please submit more detailed information to DEQ regarding the replacement screens before installation.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall comply with the terms, milestone schedule, and final compliance date in the approved CAP submitted to DEQ on September 15, 2021. The milestone schedule and final compliance date shall be fully enforceable as terms of this Order.
2. Within thirty (30) calendar days of the effective date of this Order and before the bar screens are replaced at the facility, Respondent shall submit to DEQ detailed information regarding the replacement bar screens.
3. On or before the fifteenth (15th) day of the month following the effective date of this Order and each calendar quarter thereafter until this Order is closed, Respondent shall submit 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 a final compliance report by December 31, 2024.

4. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Eight Thousand Four Hundred Dollars (\$8400.00), of which Eight Thousand Four Hundred Dollars (\$8400.00) shall be conditionally SUSPENDED by DEQ. The allowance of a conditional suspension is based upon DEQ's primary goal of regulatory compliance and Respondent's current efforts to obtain compliance. If Respondent fully complies with this Order, the suspended civil penalty of Eight Thousand Four Hundred Dollars (\$8400.00) 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 Eight Thousand Four Hundred Dollars (\$8400.00) shall be payable immediately to DEQ. 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 to the extent permitted by law.

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.

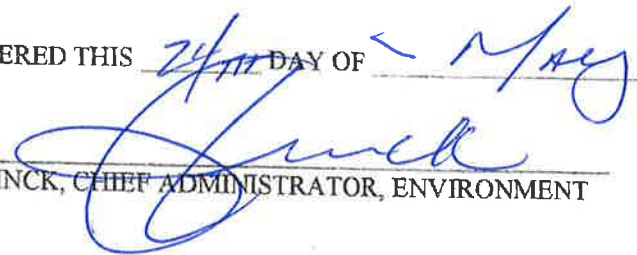
8. All requirements by the Order and Agreement are subject to approval by DEQ. Unless otherwise specified herein, in the event of any deficiencies, Respondent shall, within the timeframe specified by DEQ, submit any additional information or changes requested, or take additional actions specified by 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.³

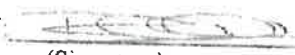
11. Each of the undersigned representatives of the parties certifies that he or she is authorized to execute this Order and to legally bind that party to its terms and conditions.

SO ORDERED THIS 24th DAY OF May 2022.


JULIE LINCK, CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

Arkansas Department of Corrections – Cummins Unit

BY: 
(Signature)

Richard Cooper
(Typed or printed name)

TITLE: Assistant Director

DATE: 5/8/22