

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Searcy Board of Public Utilities
P.O. Box 1319
Searcy, AR 72143

LIS No. 24- 134
Permit Number: AR0021601
AFIN 73-00055

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 Searcy Board of Public Utilities (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 municipal wastewater treatment plant ("Facility") located at 8700 Highway 13, Searcy, White County, Arkansas.
2. Respondent discharges treated wastewater to the Little Red River and thence to the White River in Segment 4E of the White 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 a 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 AR0021601 (“Permit”) to Respondent on April 26, 2019. The Permit became effective on May 1, 2019, was modified on July 1, 2019, and expires on April 30, 2024.

10. On March 6, 2019, DEQ requested Respondent submit a Corrective Action Plan (CAP) to address Sanitary Sewer Overflows (SSO) in the collection system.

11. On May 2, 2019, Respondent, through its engineer, submitted a CAP to address the SSOs in the collection system.

12. 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.
13. Respondent has operated this Facility beyond the expiration date of the current permit, April 30, 2024.
14. On May 1, 2023, and August 2, 2023, DEQ notified Respondent that the Permit would expire on April 30, 2024, and that in order to continue the regulated activity, a complete renewal application must be submitted no later than November 2, 2023.
15. On November 13, 2023, DEQ received a Permit renewal application from Respondent, and on November 29, 2023, DEQ notified Respondent that the application was incomplete and requested additional information.
16. On December 4, 2023, Respondent submitted a complete Permit renewal application to DEQ.
17. The complete Permit renewal application was not received by November 2, 2023. Failure to submit the complete Permit renewal application by November 2, 2023, is a violation of Part III, Section D, Condition 10 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
18. On December 19, 2023, DEQ conducted a review of the Sanitary Sewer Overflows (SSOs) reported by Respondent in accordance with the Permit for the period of December 18, 2020, through December 18, 2023. The review revealed that Respondent reported fifty-six (56) SSOs totaling approximately 3,000,000 gallons. Respondent is permitted to discharge treated municipal wastewater from its permitted outfall. Respondent is not permitted to discharge untreated wastewater from its collection system. Each SSO constituted an unpermitted discharge. Each

unpermitted discharge violated Part I, Section A of the Permit and Ark. Code Ann. § 8-4-217(b)(1)(E) and therefore violated Ark. Code Ann. § 8-4-217(a)(3).

19. Upon information received from Respondent and Respondent's consulting engineer, DEQ further reviewed the reported SSO occurring on June 18, 2023, and determined that the SSO occurred due to an upset condition at the Facility resulting from a lightning storm that caused a commercial power failure. The back-up generator at the Facility engaged but shut down shortly after starting due to overheating caused by a bad water pump. The back-up generator had been exercised the previous week with no issues.

20. On July 9, 2024, Respondent, through its consulting engineer, submitted an updated milestone schedule and final compliance date and requested a reduction of the civil penalty.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall comply with the existing Permit until either the effective date of the permit renewal or the effective date of the permit termination.
2. Respondent shall continue to implement the CAP submitted on May 2, 2019, to address SSOs in accordance with the updated milestone schedule submitted on July 9, 2024. The updated milestone schedule and final compliance date of December 31, 2029, 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 semi-annually thereafter for a period lasting until this Order is closed, Respondent shall submit semi-annual progress reports detailing the progress that has been made towards reducing and eliminating I&I and SSOs.
4. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Five Thousand Two Hundred Dollars (\$5200.00) of

which Four Thousand Two Hundred Dollars (\$4200.00) 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 actions towards achieving compliance with the Permit. If Respondent complies with the terms of this Order, then the suspended civil penalty 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 Five Thousand Two Hundred Dollars (\$5200.00) shall be payable immediately to DEQ. Payment of the civil penalty in the amount of One Thousand Dollars (\$1000.00) 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:

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.

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, 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 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) 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.

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. This Order has been reviewed and approved by the Board of Public Utilities in a duly convened meeting with a quorum present. See copy of [meeting minutes or resolution] attached as Exhibit A.

12. The Board of Public Utilities has authorized the General Manager to sign this Order on behalf of Respondent. See Exhibit A.

13. The Board of Public Utilities has authorized the General Manager 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 30th DAY OF August, 2024.

Bailey Taylor
BAILEY TAYLOR, DIVISION OF ENVIRONMENTAL QUALITY, INTERIM DIRECTOR
CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

Searcy Board of Public Utilities

BY: [Signature]
(Signature)

Daniel K. Dawson
(Typed or printed name)

TITLE: General Manager

DATE: 8-20-2024

RESOLUTION

This Resolution is adopted on this 20th day of August, 2024, by the Searcy Board of Public Utilities (SBPU) at its regularly scheduled monthly board meeting with the following Board members being present:

Ronnie McFarland, Reynie Rutledge, Butch Gardner, Donnie Miller and Steve Lightle

as well as General Manager Daniel Dawson, Assistant Manager Scotty Boggs and Engineer Paul Strickland with Garver, and

Whereas, the Searcy Board of Public Utilities has been presented with a Consent Administrative Order by the Division of Environmental Quality (DEQ) of the Arkansas Department of Energy and Environment stemming from violations of the National Pollutant Discharge Elimination System (NPDES) program under the provisions of the Arkansas Water and Air Pollution Act, and

Whereas, DEQ had issued NPDES Permit Number AR0021601 to the SBPU which was set to expire on April 30, 2024, requiring renewal submission 180 days prior to the expiration date with SBPU submitting its renewal application on November 29, 2023, followed up with a completed application on December 4, 2023, and

Whereas, a basis of the Consent Order concerns the operation by the SBPU of its municipal wastewater treatment plant which collects sanitary water from within the City of Searcy, Arkansas, and ultimately discharges treated wastewater in the the Little Red River and thence the White River Basin, and

Whereas, the SBPU has been addressing events of sanitary sewer overflows within the collection area of the SBPU having engaged the services of Garver which prepared a Corrective Action Plan which was submitted to DEQ on May 2, 2019, and

Whereas, the SBPU is committed to complying with its NPDES permit and addressing the sanitary sewer overflows under the Corrective Action Plan prepared by Garver.

NOW THEREFORE, the Searcy Board of Public Utilities hereby adopts this Resolution and authorizes General Manager Daniel Dawson to execute the Consent Order and Agreement in favor of the Division of Environmental Quality (DEQ) of the Arkansas Department of Energy and Environment and expend funds for the compliance activities required by said Consent Order.


Butch Gardner, Board Chairman

Attest:


Steve Lightle, Board Secretary