

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of West Memphis
P.O. Box 1868
West Memphis, AR 72301

LIS No. 20-134-001
Permit Number: AR0022039
AFIN 18-00879

AMENDMENT NO. 001 TO CONSENT ADMINISTRATIVE ORDER

By mutual agreement of the City of West Memphis (Respondent) and the Division of Environmental Quality (DEQ), the Consent Administrative Order (CAO) LIS 20-134 is hereby amended as follows:

1. Respondent and DEQ have agreed to amend the Findings of Fact Section of CAO LIS 20-134 with the addition of the following paragraphs:

24. On December 20, 2023, Respondent submitted a request to DEQ to amend CAO LIS 20-134. The request stated that additional time was needed to complete an expansion of the facility from 6.3 MGD to 12 MGD. Construction is expected to take up to twenty-eight (28) months to complete. The request included a new final compliance date of June 30, 2026.

25. On April 22, 2024, DEQ conducted a review of the certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.

26. 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 April 1, 2019, through February 29, 2024:

- a. Twelve (12) violations of Total Suspended Solids;
- b. Four (4) violations of Carbonaceous Biochemical Oxygen Demand;
- c. Four (4) violations of Fecal Coliform Bacteria; and
- d. One (1) violation of pH.

27. Each of the twenty-one (21) discharge limitation violations listed in Paragraph 26 above constitutes a separate permit violation for a total of twenty-one (21) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

28. The review of the DMRs also revealed that Respondent failed to submit the DMRs by the due date for the June 2020 and June 2023 monitoring periods. Failure to submit DMRs with the monitoring results obtained during the monitoring period no later than the 25th of the month following the completed monitoring period is a violation of Part III, Section C, Condition 5 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

29. DEQ conducted a review of the SSOs and treatment bypasses reported by Respondent in accordance with the Permit for the period of April 1, 2019 through April 30, 2023. Review revealed that Respondent reported sixty-five (65) SSOs totaling over 40,000 gallons. Of these SSOs, thirty-nine (39) reached waters of the state.

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 constitutes an unpermitted discharge. Each unpermitted discharge violated Ark. Code Ann. § 8-4-217(b)(1)(E) and therefore violated Ark. Code Ann. § 8-4-217(a)(3).

2. Respondent and DEQ have further agreed to amend the Order and Agreement Section of CAO LIS 20-134, by deleting Paragraph 1 and replacing the paragraph with the following:

1. Within thirty (30) calendar days of the effective date of this Amended CAO, Respondent submit to DEQ, for review and approval, a revised Corrective Action Plan (CAP) with an updated milestone schedule and a final compliance date no later than December 31, 2026. The terms of the approved revised CAP shall be fully enforceable as terms of this Order.

3. Respondent and DEQ have further agreed to amend the Order and Agreement Section of CAO LIS 20-134 with the addition of the following paragraphs:

15. On the fifteenth (15th) day of the month following the effective date of this Amended CAO, and each quarter thereafter until this CAO, as amended, is closed, Respondent shall submit a quarterly report detailing the progress towards completion of the construction of the facility and compliance with the effluent limits and conditions set forth in the Permit.

16. On or before December 31, 2026, Respondent shall submit a certification of compliance from a Professional Engineer (P.E.) licensed in the state of Arkansas stating that the corrective actions listed in the approved revised CAP have been completed and that Respondent is in compliance with all limits and conditions in the Permit and has eliminated SSOs in the collection system.

17. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Two Thousand Seven Hundred Fifty Dollars (\$2750.00). Payment is due within thirty (30) calendar days of the effective date of this Amended CAO. 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

3. All provisions of CAO LIS 20-134 not explicitly modified by this Amended CAO LIS 20-134-001 shall remain in full force and effect and are hereby incorporated by reference.

4. This Amended CAO 20-134-001 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 for thirty (30) calendar days following the close of the public comment period to rescind this Amendment based upon the comments received within the thirty (30) day public comment period notwithstanding the public notice requirements.

5. Nothing in this Amended CAO LIS 20-134-001 shall be construed as a waiver by DEQ of its enforcement authority over alleged violations not specifically addressed in CAO LIS 20-134, as amended by CAO LIS 20-134-001. Also, this Amended CAO does not exonerate Respondent from any past, present, or future conduct that is not expressly addressed in CAO LIS 20-134, as amended by CAO LIS 20-134-001, nor does it relieve Respondent of its responsibilities for obtaining any necessary permits.

6. Other than as set forth herein, this Amended CAO may not be altered, amended, or terminated except by written agreement signed by DEQ and by Respondent, or by action of DEQ exercising the right of rescission pursuant to Paragraph 4 above.

7. This Amended CAO 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.

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

9. The City Council of Respondent has authorized the Mayor and City Clerk/Treasurer to expend funds for compliance activities required by this Amended CAO including but not limited to the payment of a civil penalty. See Exhibit A.

SO ORDERED THIS 6¹⁰ DAY OF June July BMT, 2024.

Bailey Taylor

Bailey Taylor, Interim

CALEB J. OSBORNE, DIVISION OF ENVIRONMENTAL QUALITY, DIRECTOR
CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

City of West Memphis

BY: *Marco McClendon*
(Signature)

Marco McClendon
(Typed or printed name)

TITLE: *Mayor*

DATE: *06/11/24*

RESOLUTION NO. 2300

A RESOLUTION AUTHORIZING THE CITY OF WEST MEMPHIS TO ENTER INTO A CONSENT ADMINISTRATIVE ORDER WITH THE ARKANSAS DEPARTMENT OF ENERGY & ENVIRONMENT, DIVISION OF ENVIRONMENTAL QUALITY (DEQ)

WHEREAS, it is in the City's best interest to enter into an agreement with DEQ and resolve the violations of the Arkansas Water and Air Pollution Control Act listed in the proposed Consent Administrative Order.

WHEREAS, the Mayor and Public Works Director or other designated person, working with a Professional Engineer, have developed a plan of action to address the issues listed in the proposed Consent Administrative Order.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST MEMPHIS, ARKANSAS:

- 1. The proposed Consent Administrative Order has been reviewed and approved by the City Council in a duly convened meeting with a quorum present.*
- 2. The City Council of the City of West Memphis authorizes the Mayor to sign the proposed Consent Administrative Order.*
- 3. The City Council of the City of West Memphis authorizes the Mayor and treasurer to expend funds for compliance activities required by the proposed Consent Administrative Order including but not limited to the payment of a civil penalty as set forth in the proposed Consent Administrative Order.*

ADOPTED on this 6th day of June, 2024.

APPROVED: Mark H. Cleland

MAYOR

ATTEST: Patricia Lane

CITY CLERK

RECEIVED
City Clerk's Office
Date/Time 05/29/24 8:00
By Patricia Lane mm