

RESOLUTION NO. R-19-24

A RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF A CONSENT ADMINISTRATIVE ORDER WITH THE ARKANSAS DIVISION OF ENVIRONMENTAL QUALITY WITH REFERENCE TO THE MASSARD WATER RECLAMATION FACILITY'S NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, that:

WHEREAS, the City of Fort Smith owns and operates the Massard Water Reclamation Facility for treatment of sanitary sewer and wastewater; and

WHEREAS, the Massard Water Reclamation Facility operates under the State of Arkansas issued National Pollutant Discharge Elimination System (NPDES) Permit AR0021750; and

WHEREAS, the City of Fort Smith is committed to compliance with the Clean Water Act and its NPDES permit requirements; and

WHEREAS, the City of Fort Smith has submitted to the Arkansas Division of Environmental Quality (ADEQ) a voluntary Corrective Action Plan (CAP) resulting in a proposed Consent Administrative Order (CAO) with suspended penalty to address operational issues related to the permit.

NOW, THEREFORE:

SECTION 1: The attached precedent for a Consent Administrative Order with the Arkansas Division of Environmental Quality (ADEQ) is hereby approved by the City of Fort Smith, and the Mayor, his signature being attested by the City Clerk, is hereby authorized to execute the Consent Administrative Order (CAO).

SECTION 2: The City Administrator, and his designated agents, are hereby authorized to execute actions required of the City of Fort Smith by the CAO, including payment of civil penalties set forth in the Order.

This Resolution adopted this 6th day of February, 2024.

Attest:
Shirley Gaud
City Clerk

APPROVED:
[Signature]
Mayor

Approved as to form:
[Signature] NPR

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Fort Smith
Massard Water Reclamation Facility
801 Carnall Ave., Ste. 500
Fort Smith, AR 72901

LIS No. 24-
Permit No. AR0021750
AFIN 66-01652

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 the Arkansas Pollution Control and Ecology Commission (APC&EC).

The issues herein having been settled by the agreement of the City of Fort Smith (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 1609 North 9th Street, Barling, Sebastian County, Arkansas.
2. Respondent discharges treated wastewater to the Arkansas River at Pool 13 approximately 800 feet west of Lock and Dam 13 in Segment 3H 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 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 AR0021750 (“Permit”) to Respondent on February 17, 2021. The Permit became effective on March 1, 2021, and expires on February 28, 2026.
10. On August 21, 2023, Respondent notified DEQ that it had been unable to meet the permitted effluent limitations for Ammonia Nitrogen since May 2023, and it anticipated additional violations. Respondent stated it would submit a Corrective Action Plan (CAP) with a milestone schedule and final date of compliance to address the violations for Ammonia Nitrogen and

requested a consent administrative order to allow sufficient time to identify the cause of the Ammonia Nitrogen exceedances and take corrective actions.

11. On September 6, 2023, DEQ acknowledged receipt of Respondent's August 21, 2023 letter and stated that DEQ would expect the CAP to be submitted on or before November 21, 2023, and that DEQ would prepare a consent administrative order to address the effluent violations and incorporate the CAP and milestone schedule.

12. On January 18, 2024, DEQ conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.

13. 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 December 31, 2020, through November 30, 2023:

- a. Sixteen (16) violations of Ammonia Nitrogen;
- b. Two (2) violations of Carbonaceous Biochemical Oxygen Demand;
- c. Two (2) violations of Total Suspended Solids; and
- d. Two (2) violations of Fecal Coliform Bacteria.

14. Each of the twenty-two (22) discharge limitation violations listed in Paragraph 13 above constitutes a separate permit violation for a total of twenty-two (22) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Within thirty (30) calendar days of the effective date of this Order, Respondent shall submit to DEQ, for review and approval, a comprehensive CAP developed by a Professional Engineer licensed in the state of Arkansas. The CAP shall include, at minimum, the methods and best available technologies that will be used to correct the violations listed in Findings of Fact

Paragraph 13 and prevent future violations and include a reasonable milestone schedule with a date of final compliance. Upon review and approval by DEQ, Respondent shall comply with the terms, milestone schedule, and final compliance date contained in the approved CAP. The milestone schedule and final compliance date shall be fully enforceable as terms of this Order.

2. 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 permitted effluent limits set forth in Part I, Section A of the Permit. Within thirty (30) calendar days of the final compliance date in the approved CAP, Respondent shall submit a final compliance report that includes a certification of compliance from a Professional Engineer licensed in the state of Arkansas.

3. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Three Thousand Six Hundred Dollars (\$3600.00), of which Three Thousand Six Hundred Dollars (\$3600.00) 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 efforts to take appropriate corrective actions to achieve compliance with the Permit. If Respondent fully complies with this Order, the suspended civil penalty of Three Thousand Six Hundred Dollars (\$3600.00) 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 Three Thousand Six Hundred Dollars (\$3600.00) 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. This Order 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.

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

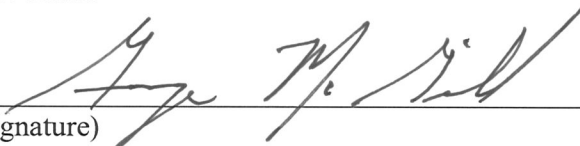
12. The City Council of Respondent has authorized the Mayor and City Clerk/Treasurer to expend funds for compliance activities required by this Order including but not limited to the payment of a civil penalty as set forth in this Order. See Exhibit A.

SO ORDERED THIS _____ DAY OF _____, 2024.

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

APPROVED AS TO FORM AND CONTENT:

City of Fort Smith

BY: 
(Signature)

George McGill
(Typed or printed name)

TITLE: Mayor

DATE: 2/6/2024

ATTEST: 
City Clerk

RESOLUTION NO. R-19-24

A RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF A CONSENT ADMINISTRATIVE ORDER WITH THE ARKANSAS DIVISION OF ENVIRONMENTAL QUALITY WITH REFERENCE TO THE MASSARD WATER RECLAMATION FACILITY'S NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, that:

WHEREAS, the City of Fort Smith owns and operates the Massard Water Reclamation Facility for treatment of sanitary sewer and wastewater; and

WHEREAS, the Massard Water Reclamation Facility operates under the State of Arkansas issued National Pollutant Discharge Elimination System (NPDES) Permit AR0021750; and

WHEREAS, the City of Fort Smith is committed to compliance with the Clean Water Act and its NPDES permit requirements; and

WHEREAS, the City of Fort Smith has submitted to the Arkansas Division of Environmental Quality (ADEQ) a voluntary Corrective Action Plan (CAP) resulting in a proposed Consent Administrative Order (CAO) with suspended penalty to address operational issues related to the permit.

NOW, THEREFORE:

SECTION 1: The attached precedent for a Consent Administrative Order with the Arkansas Division of Environmental Quality (ADEQ) is hereby approved by the City of Fort Smith, and the Mayor, his signature being attested by the City Clerk, is hereby authorized to execute the Consent Administrative Order (CAO).

SECTION 2: The City Administrator, and his designated agents, are hereby authorized to execute actions required of the City of Fort Smith by the CAO, including payment of civil penalties set forth in the Order.

This Resolution adopted this 6th day of February, 2024.

Attest:

Shirley Dard
City Clerk

APPROVED:

[Signature]
Mayor

Approved as to form:

[Signature] NPR

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Fort Smith
Massard Water Reclamation Facility
801 Carnall Ave., Ste. 500
Fort Smith, AR 72901

LIS No. 24-
Permit No. AR0021750
AFIN 66-01652

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 the Arkansas Pollution Control and Ecology Commission (APC&EC).

The issues herein having been settled by the agreement of the City of Fort Smith (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 1609 North 9th Street, Barling, Sebastian County, Arkansas.
2. Respondent discharges treated wastewater to the Arkansas River at Pool 13 approximately 800 feet west of Lock and Dam 13 in Segment 3H 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 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 AR0021750 (“Permit”) to Respondent on February 17, 2021. The Permit became effective on March 1, 2021, and expires on February 28, 2026.

10. On August 21, 2023, Respondent notified DEQ that it had been unable to meet the permitted effluent limitations for Ammonia Nitrogen since May 2023, and it anticipated additional violations. Respondent stated it would submit a Corrective Action Plan (CAP) with a milestone schedule and final date of compliance to address the violations for Ammonia Nitrogen and

requested a consent administrative order to allow sufficient time to identify the cause of the Ammonia Nitrogen exceedances and take corrective actions.

11. On September 6, 2023, DEQ acknowledged receipt of Respondent's August 21, 2023 letter and stated that DEQ would expect the CAP to be submitted on or before November 21, 2023, and that DEQ would prepare a consent administrative order to address the effluent violations and incorporate the CAP and milestone schedule.

12. On January 18, 2024, DEQ conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.

13. 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 December 31, 2020, through November 30, 2023:

- a. Sixteen (16) violations of Ammonia Nitrogen;
- b. Two (2) violations of Carbonaceous Biochemical Oxygen Demand;
- c. Two (2) violations of Total Suspended Solids; and
- d. Two (2) violations of Fecal Coliform Bacteria.

14. Each of the twenty-two (22) discharge limitation violations listed in Paragraph 13 above constitutes a separate permit violation for a total of twenty-two (22) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Within thirty (30) calendar days of the effective date of this Order, Respondent shall submit to DEQ, for review and approval, a comprehensive CAP developed by a Professional Engineer licensed in the state of Arkansas. The CAP shall include, at minimum, the methods and best available technologies that will be used to correct the violations listed in Findings of Fact

Paragraph 13 and prevent future violations and include a reasonable milestone schedule with a date of final compliance. Upon review and approval by DEQ, Respondent shall comply with the terms, milestone schedule, and final compliance date contained in the approved CAP. The milestone schedule and final compliance date shall be fully enforceable as terms of this Order.

2. 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 permitted effluent limits set forth in Part I, Section A of the Permit. Within thirty (30) calendar days of the final compliance date in the approved CAP, Respondent shall submit a final compliance report that includes a certification of compliance from a Professional Engineer licensed in the state of Arkansas.

3. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Three Thousand Six Hundred Dollars (\$3600.00), of which Three Thousand Six Hundred Dollars (\$3600.00) 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 efforts to take appropriate corrective actions to achieve compliance with the Permit. If Respondent fully complies with this Order, the suspended civil penalty of Three Thousand Six Hundred Dollars (\$3600.00) 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 Three Thousand Six Hundred Dollars (\$3600.00) 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

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.

4. 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
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5. 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.

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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.

7. 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.

8. 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.

9. 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.

10. This Order 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.

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

12. The City Council of Respondent has authorized the Mayor and City Clerk/Treasurer 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 _____ DAY OF _____, 2024.

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

APPROVED AS TO FORM AND CONTENT:

City of Fort Smith

BY: _____
(Signature)

(Typed or printed name)

TITLE: _____

DATE: _____