

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Oak Grove Heights  
85 Kimberly Street  
Paragould, AR 72660

LIS No. 18-035  
Permit No. AR0045837  
AFIN 28-00091

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 regulations issued thereunder by Arkansas Pollution Control and Ecology Commission (APC&EC).

The issues herein having been settled by the agreement of City of Oak Grove Heights ("Respondent") and the Arkansas Department of Environmental Quality (ADEQ or "Department"), 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 wastewater treatment plant ("facility") located ¼ mile north and ¼ mile east of Highway 135 bridge crossing Locust Creek Ditch in Greene County, Arkansas.
2. Respondent is regulated pursuant to the National Pollutant Discharge Elimination System (NPDES).
3. Respondent discharges treated wastewater to an unnamed tributary of Locust Creek, thence to Locust Creek, thence to Eight-Mile Ditch, thence to the St. Francis River in Segment 5A of the St. Francis River Basin.

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. ADEQ is authorized under the Arkansas Water and Air Pollution Control Act (the 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, regulation, or order adopted by the [APC&EC] under this chapter or of a permit issued under this chapter by the [ADEQ].
7. Ark. Code Ann. § 8-4-103(c)(1)(A) authorizes ADEQ to assess an administrative civil penalty not to exceed ten thousand dollars (\$10,000.00) per violation for any violation of any provision of the Act and any regulation 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. NPDES Permit Number AR0045837 (“Permit”) was issued to the Respondent on August 21, 2012. The Permit became effective on September 1, 2012. The Permit was renewed on July 25, 2017, becoming effective on August 1, 2017 and expires on July 31, 2022.
10. On November 18, 2014, the Department requested a Corrective Action Plan (CAP) from Respondent to resolve reported effluent violations. The CAP was to have a milestone schedule with dates and a final date of compliance.

11. On February 15, 2015, Respondent submitted a CAP that stated that the Facility was to repair aerators and clean the chlorine contact chamber in order to correct effluent violations.
12. On March 6, 2015, Respondent submitted a letter from Civil Engineering Associates, LLC requesting a couple of months to monitor the facility before certifying the facility as in compliance.
13. On December 29, 2015, ADEQ proposed a draft Consent Administrative Order to Respondent to resolve the violations cited herein.
14. On January 19, 2016, the Department met with Respondent. Respondent detailed steps taken towards achieving compliance with the Permit such as sludge depth analysis and smoke testing.
15. On January 21, 2016, Respondent submitted a response to the draft CAO with a Corrective Action Plan (CAP) developed by a Professional Engineer (P.E.) with a milestone schedule.
16. On December 12, 2016, the Department requested a revised CAP developed by a P.E. with a milestone schedule.
17. On February 28, 2017, ADEQ notified Respondent that the CAP was approved.
18. On January 24, 2018, the Department conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by the Facility 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 December 1, 2013, through December 31, 2016:
  - a. Five (5) violations for Carbonaceous BOD;
  - b. Five (5) violations for Ammonia Nitrogen;
  - c. Four (4) violations for pH; and
  - d. Thirty-three (33) violations for Total Suspended Solids.

19. Each of the forty-seven (47) discharge limitation violations listed in Paragraph 18 above constitutes a separate permit violation for a total of forty-seven (47) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

20. On January 24, 2018, the Department conducted a file review of Sanitary Sewer Overflow (SSO) reports submitted by the facility in accordance with the Permit for the period of December 31, 2013 through December 31, 2016. The review revealed that Respondent reported thirty-four (34) SSOs.

21. Each of the thirty-four (34) SSOs constitutes an unpermitted discharge that violates Ark. Code Ann. § 8-4-217(a)(3).

#### ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall achieve final compliance with the terms of the permit no later than February 28, 2019. Respondent shall comply with the terms and milestone schedule contained in the approved CAP and final compliance date of February 28, 2019. The approved CAP, milestone schedule, and final compliance date of February 28, 2019 shall be fully enforceable as terms of this Order.

2. On or before the fifteenth (15<sup>th</sup>) day of the month following the effective date of this Order, and each quarter thereafter for a period lasting until this Order is closed, the Respondent shall submit quarterly progress reports detailing the progress that has been made towards correcting the violations listed in the Findings of Fact. Respondent shall submit the final compliance report by February 28, 2019.

3. Within twelve (12) months of the effective date of this Order, with the overall goal of eliminating capacity and non-capacity related SSOs, the Respondent shall submit to ADEQ for review and approval a Sewer System Evaluation Study (SSES) for its sanitary sewer collection

system developed by a P.E. licensed in the State of Arkansas.

- a. The SSES should at minimum have the following elements:
  - i. Perform smoke testing in all areas of the collection system, beginning with highest priority areas;
  - ii. Perform televising of lines in areas deemed necessary based on smoke testing in order to locate leaks and to determine method of repair;
  - iii. Develop a plan to address deficiencies through rehabilitation, repair, or replacement;
  - iv. Develop a manhole inspection program, beginning in highest priority area; and
  - v. Recommend a method of repair and develop a cost estimate for such.

Based on the results of the above studies, the Respondent will be able to identify areas requiring improvements and to prioritize those improvements. Short-term and long-term improvements shall be considered to remedy deficiencies.

- b. The SSES shall include an SSO Plan with a milestone schedule that details the steps the Respondent shall take to fully and expeditiously implement the corrective action. Upon approval by ADEQ, the SSO Plan and milestone schedule shall be incorporated into this Order by reference and shall be followed by the Respondent. Failure to comply with the schedule, as approved by ADEQ, will result in the Respondent being

subject to the stipulated penalties contained in Paragraph 7 below.

4. Within six (6) months of the effective date of this Order, Respondent shall submit to ADEQ a progress report detailing the actions which have been made in SSES and SSO Plans. Respondent shall continue to submit semi-annual progress reports thereafter until the Order is closed.

5. On or before the final compliance dates listed in the SSES and SSO Plans, Respondent shall submit a final report to the Department detailing actions taken under the SSES and SSO Plans and the date of final compliance was achieved. This report must be certified by a P.E. licensed in the State of Arkansas.

6. In compromise and full settlement of the violations specified in the Findings of Fact, the Respondent agrees to pay a reduced civil penalty of ONE THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$1,750.00) within thirty (30) calendar days of the effective date of this Order. Such payment of the penalty shall be made payable to the Arkansas Department of Environmental Quality, and mailed to the attention of:

Arkansas Department 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, ADEQ shall be entitled to attorneys' fees and costs of collection.

7. Failure to meet any requirement or deadline of this Order constitutes a violation of said Order. If Respondent should fail to meet any such requirements or deadlines, Respondent consents and agrees to pay on demand to ADEQ 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 which may be available to ADEQ by reason of failure by Respondent to comply with the requirements of this Order.

8. If any event, including but not limited to an act of nature, occurs which 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.

9. ADEQ 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 ADEQ promptly, as provided in the preceding paragraph of this Section, shall be grounds for a denial of an extension.

10. All requirements by the Order and Agreement are subject to approval by ADEQ. Unless otherwise specified herein, in the event of any deficiencies, Respondent shall, within the timeframe specified by ADEQ, submit any additional information or changes requested, or take additional actions specified by ADEQ to correct any such deficiencies. Failure to adequately respond to such Notice of Deficiency within the timeframe specified in writing by ADEQ constitutes a failure to

meet the requirements established by this Order.

11. This Order is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d) and APC&EC Regulation No. 8 and shall not be effective until thirty (30) calendar days after public notice is given. ADEQ retains the right to rescind this Order based upon the comments received within the thirty-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 10<sup>th</sup> or 25<sup>th</sup> day of the month following the date this Order is executed. As provided by APC&EC Regulation No. 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.

12. Nothing in this Order shall be construed as a waiver by ADEQ 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 which is not expressly addressed herein, nor does it relieve Respondent of its responsibilities for obtaining any necessary permits.

13. 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.

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



15. 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 assessed in this Order. See Exhibit A.

SO ORDERED THIS 5th DAY OF April, 2018.

Becky W. Keogh  
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

City of Oak Grove Heights

BY: Rudy Garner  
(Signature)

Rudy Garner  
(Typed or printed name)

TITLE: Mayor

DATE: 3-27-18

RESOLUTION NO. 2018 - 135

**BE IT RESOLVED BY THE CITY COUNCIL OF OAK GROVE HEIGHTS, ARKANSAS, A  
RESOLUTION ENTITLED,**

**“A RESOLUTION AUTHORIZING THE CITY OF OAK GROVE HEIGHTS TO ENTER INTO  
A CONSENT ADMINISTRATIVE ORDER WITH AKRKANSAS DEPARTMENT OF  
ENVIRONMENTAL QUALITY FOR CITIZENS OF OAK GROVE HEIGHTS, ARKANSAS”**

**WHEREAS,** The City of Oak Grove Heights since 2012 has been working with Arkansas Department of Environmental Quality (hereinafter ADEQ) to take significant corrections to the wastewater treatment plant; and

**WHEREAS,** previously, the City Council had appealed to ADEQ to reduce civil penalties assessed and revealed a corrective action plan that was satisfactory; and

**WHEREAS,** the City Council would like to accept the Consent Administrative Order, (hereinafter CAO) as referenced as Exhibit A, reducing the penalty from Seven Thousand Dollars to One Thousand Seven Hundred Fifty Dollars from ADEQ issued on March 16, 2018.

**NOW THEREFORE, BE IT RESOLVED,** by the City of Oak Grove Heights, Arkansas as follows:

**Section 1.** The City Council has reviewed the terms of the CAO, and such are attached and referenced as though set forth herein.

**Section 2.** The City Council would like to accept the terms as set forth and agrees to continue with the schedule set forth by Corrective Action Plan and schedules set forth by the engineer.

**Section 3.** The Mayor and City Clerk of the City Of Oak Grove Heights are further authorized to execute any necessary documents and sign and acknowledge the Order and return it within the time prescribed.

**Adopted and approved by the City Council of the City of Oak Grove Heights, Arkansas, on this 26 day of March, 2018.**

**APPROVED:** Rudy Garner  
Mayor, Rudy Garner

Kim Bailey  
Alderman, Kim Bailey

Rebecca Book  
Alderman, Rebecca Book

Marilyn Fuller  
Alderman, Marilyn Fuller

Ronnie Kibler  
Alderman, Ronnie Kibler

(Absent)  
Alderman, Tammy Riggins

Mike Robinson  
Alderman, Mike Robinson

ATTEST: Susan Rollins  
Recorder/Treasurer: Susan Rollins