

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Turrell
P.O. Box 249
Turrell, AR 72384

LIS No. 18- 040
Permit No. AR0021954
AFIN 18-00108

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 the City of Turrell ("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 municipal wastewater treatment plant ("facility") located as follows: East of town at Big Creek and Burlington Railroad in Crittenden County, Arkansas.
2. Respondent discharges treated wastewater to Big Creek, thence to the Tyronza River, thence to the St. Francis River in Segment 5A of the St. Francis 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. 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)(2),(3) provides:

(a) It shall be unlawful for any person to:

....

(2) Place or cause to be placed any sewage, industrial waste, or other wastes in a location where it is likely to cause pollution of any waters of this state;

(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) 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), “Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment.”

9. NPDES Permit Number AR0021954 (“Permit”) was issued to the Respondent on February 29, 2012. The Permit became effective on March 1, 2012, with a minor modification to the permit becoming effective on July 12, 2013, and expiring on February 28, 2017.

10. On June 27, 2016, Respondent submitted a complete Permit renewal application. The Permit application was deemed administratively complete on July 6, 2016, and therefore Respondent's coverage under the Permit is currently administratively continued pursuant to APC&EC Reg. 6.201.

11. On April 21, 2015, ADEQ conducted a routine compliance inspection of the facility. The inspection revealed the following violations:

- a. The levee between cells 1 and 2, and the levee between cells 1 and 3 were eroded resulting in bypasses between the cells. The internal levees separating cells 1, 2, and 3 were observed to be washed out in multiple locations resulting in short-circuiting. This failure to properly operate and maintain the WWTP violated Part III, Section B, Paragraph (1)(A) of the Permit and therefore Ark. Code Ann. § 8-4-217(a)(3).
- b. The inspection revealed cell 2 had a large amount of vegetation present in the lagoon. Also noted was the presence of vegetation overgrowth on the majority of the lagoon levees. This failure to properly operate and maintain the WWTP violated Part III, Section B, Paragraph (1)(A) of the Permit and therefore Ark. Code Ann. § 8-4-217(a)(3).

12. On March 15, 2016, ADEQ conducted a compliance inspection of the facility at the request of the Enforcement Branch as the Department had received a report that the effluent pump station was destroyed by fire. The inspection revealed the following violations:

- a. The internal levees separating cells 1, 2, and 3 were observed to be washed out in multiple locations resulting in short-circuiting. This failure to properly operate and maintain the WWTP violated Part III, Section B,

Paragraph (1)(A) of the Permit and therefore Ark. Code Ann. § 8-4-217(a)(3). This is a repeat violation.

- b. Inspection revealed extensive erosion of the external levees. At the time of the inspection, there were multiple overflows from the facility. There were two large overflows from cell 1 over the top of the north levee. There was a smaller overflow over the top of the west levee of cell 1. The overflows, as observed, created an unpermitted discharge to waters of the state in violation of Ark. Code Ann. § 8-4-217 (b)(1)(E) and Ark. Code Ann. § 8-4-217(a)(2).
- c. The effluent pumps station had been destroyed by fire. The pumps were not operational due to fire damage to the electrical supply and control wires. This failure to properly operate and maintain the equipment is a violation of Part III, Section B, Paragraph (1)(A) and therefore Ark Code Ann. § 8-4-217(a)(3)
- d. The chlorinator equipment observed was damaged and in need of repair or replacement. This failure to properly operate and maintain the equipment is a violation of Part III, Section B, Paragraph (1)(A) and therefore Ark Code Ann. § 8-4-217(a)(3).
- e. There were multiple animal burrows along the external levees, specifically on the east side of the facility. In addition, extensive vegetation was found in cell 2. This is further evidence that the facility has had limited maintenance performed, as the same violations were reported in the inspections of April 21, 2015, and March 15, 2016. This is

a repeat violation of Part III, Section B, Paragraph (1)(A), and therefore Ark Code Ann. § 8-4-217(a)(3).

13. On June 6, 2016, ADEQ notified Respondent of the results of the March 15, 2016 inspection. The Department requested a response to the inspection report be received from Respondent by July 8, 2016. To date, the requested response has not been received.

14. On August 23, 2016, ADEQ sent a Corrective Action Plan (CAP) request to Respondent requiring a response within thirty (30) days from Respondent's receipt of the letter. In addition, ADEQ requested submission of Quarterly Progress reports by Respondent starting October 15, 2016, and continuing through completion of the corrective actions for this facility.

15. On August 29, 2016, ADEQ investigated a suspected break in the inflow piping to the wastewater treatment pond. At the conclusion of the investigation, Respondent was notified of the break, which required immediate attention as untreated sewage from the break was flowing into Little Cypress Bayou. The breach, as observed by the inspector, created an unpermitted discharge to waters of the state thus violating Ark. Code Ann. § 8-4-217(b)(1)(E) and Ark. Code Ann. § 8-4-217(a)(2).

16. On August 30, 2016, Respondent made the required 24-hour verbal notification as per Part III, Section D, Paragraph 6 of the Permit.

17. On August 30, 2016, ADEQ conducted a compliance inspection of the facility to assess the current conditions and determine if any corrective actions had been taken since the March 15, 2016 inspection. The inspection revealed the following:

- a. There was an unpermitted discharge of raw sewage into Little Cypress Bayou from the influent force main. A large section of the pipe was

missing where the force main crosses Little Cypress Bayou resulting in all raw sewage from the Respondent being discharged directly into Little Cypress Bayou. Samples of the discharge were collected on the morning of August 30, 2016. The samples were tested, and revealed Fecal Coliform of 450,000 CFU/100ml, which is in excess of the 1000 CFU/100ml limit. *E. coli* testing revealed 300,000 CFU/100ml, which is exceeds the limit of 410 CFU/100ml. These exceedances violate Arkansas Water and Air Pollution Control Act – Ark. Code Ann. § 8-4-217(a)(2) and (3) and Ark. Code Ann. § 8-4-217(b)(1)(E).

- b. The lagoons were overgrown with vegetation making it impossible to perform a thorough visual inspection. The observed lack of maintenance was previously noted in the inspections of April 21, 2015 and March 15, 2016. This is a repeat violation of Part III, Section B, Paragraph (1)(A) and therefore Ark Code Ann. § 8-4-217(a)(3).

18. As reported in the inspections performed on April 21, 2015, March 15, 2016, and August 30, 2016, the original bridge to the main entrance of the facility was removed. The facility is only accessible via agriculture fields off Old River Road. During the March 15, 2016 inspection, the Department was denied access to the facility by the owner of the agriculture field. As a result of the bridge failure and access denial by the neighboring property owner, there is no way to enter the facility. This is a violation of Part III, Section B, Paragraph (1)(A) and therefore Ark Code Ann. § 8-4-217(a)(3).

19. On May 1, 2017, the Department received notification from U.S. Fish and Wildlife Service that Respondent's sewage lagoon was overflowing into Wapanocca National

Wildlife Refuge. Overflows of the sewage lagoon constitute an unpermitted discharge in violation of Part I Section A of the Permit and thus a violation of Ark. Code Ann. § 8-4-217(a)(3).

20. On September 22, 2017, Respondent reported via phone call to the Department that construction of the bridge to allow access to the facility was about to begin.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Within thirty (30) days of the effective date of the order, Respondent shall submit, for review and approval a comprehensive CAP developed by a Professional Engineer (P.E.) licensed in the state of Arkansas. The CAP shall, at minimum, include a reasonable milestone schedule with a date of final compliance no later than December 31, 2019, addressing the specific action taken to correct the violations specified in Finding of Fact Paragraphs 11, 12, 13, 17, and 18 and prevent future violations. Upon review and approval by ADEQ, Respondent shall comply with the terms, milestone schedule, and final compliance date of December 31, 2019, contained in the CAP. The approved CAP, milestone schedule, and final compliance date of December 31, 2019, 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 final permitted effluent limits. Respondent shall submit the final compliance report by December 31, 2019.

3. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a reduced civil penalty of TWO THOUSAND DOLLARS (\$2,000.00) 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.

4. 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:

First day through fourteenth day:	\$100.00 per day
Fifteenth day through the thirtieth day:	\$500.00 per day
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.

5. 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.

6. 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.

7. 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.

8. 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 10th or 25th 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.

9. 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.

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 assessed in this Order. See Exhibit A.

SO ORDERED THIS 10th ^{5th of May Bure} DAY OF April, 2018.

Becky W Keogh
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

City of Turrell

BY: Dorothy A. Cooper
(Signature)

Dorothy A Cooper
(Typed or printed name)

TITLE: Mayor

DATE: April 10, 2018

RESOLUTION NO. 2018-0411

Whereas this Resolution is being written to show the municipality of the City of Turrell met on Tuesday, April 10, 2018 in a Regular City Council meeting and voted Yes to adhere to NPDES Permit No. ARO021954, AFIN: 18-00108 REVISED PROPOSED CONSENT ADMINISTRATIVE ORDER. This CAO enforced a civil penalty upon the City of Turrell for having issues found at our sewer pond by the Arkansas Department of Environmental Quality, 5301 Northshore Drive, North Little Rock, Arkansas.

Let the record show, the municipality of Turrell agrees to pay the \$2000.00 reduced civil penalty to ADEQ within (30) calendar days of the effective date of this Order as described in the above NPDES Permit.

Submitted this 10th day of April in the year of 2018.

Dorothy A Cooper
MAYOR

April 10, 2018
DATE

Aora Jordan
CITY CLERK

April 10, 2018
DATE