

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Hughes
P.O. Box 145
Hughes, AR 72348

LIS No. 16- 039
Permit No. AR0021547
AFIN 62-00067

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (hereinafter "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 the Arkansas Pollution Control and Ecology Commission (hereinafter "APC&EC").

The issues herein having been settled by the agreement of the City of Hughes (hereinafter "Respondent") and the Arkansas Department of Environmental Quality (hereinafter "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 (hereinafter "facility") located at 451 Jones Road, Hughes, St. Francis County, Arkansas.
2. Respondent is regulated pursuant to the National Pollutant Discharge Elimination System (hereinafter "NPDES").

3. Respondent discharges treated wastewater to Crooked Bayou; thence to Millseed Lake, thence to Frenchman's Bayou, 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 to issue NPDES permits in the state of Arkansas and to initiate an enforcement action for any violation of an NPDES permit.

6. The Respondent's NPDES Permit Number AR0021547 (hereinafter "Permit") was renewed on August 30, 2013. The renewed Permit became effective on September 1, 2013 and expires on August 31, 2018.

7. 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].

8. 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.

9. 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."

10. On February 20, 2015, ADEQ conducted a review of the Discharge Monitoring Reports (hereinafter "DMRs"). As a result of the review, the Department sent a letter to Respondent requesting a Corrective Action Plan (hereinafter "CAP") with a milestone schedule and final date of compliance to address the effluent violations that were reported.

11. ADEQ received a CAP letter dated April 14, 2015, outlining deficiencies and cost-estimates of associated repairs. The CAP did not have a milestone schedule but did state Respondent should be in compliance by June 2018.

12. On May 15, 2015, ADEQ met with Respondent. During the meeting, Respondent discussed the proposed plans for repairing the facility and returning to compliance with the Permit. The deficient CAP submitted on April 14, 2015 was discussed, and the Department clarified what was needed to complete the CAP submission, and to submit the revisions to the Department by June 5, 2015.

13. On July 8 and 9, 2015, ADEQ received a revised CAP and milestone schedule updating the original April 14, 2015 submission. Due to actions required to obtain funding for the repairs, the CAP listed a final date of compliance of June 15, 2018.

14. On July 29, 2015, the Department sent a letter to Respondent, approving the CAP and advising the facility to continue with the corrective actions as outlined in the CAP submitted.

15. On February 19, 2016, the Department conducted a comprehensive review of the certified DMRs submitted by the Facility in accordance with the Permit.

16. 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 January 1, 2013, through December 31, 2015:

- a. Twenty-one (21) violations of Total Suspended Solids and
- b. Three (3) violations for Dissolved Oxygen

17. Each of the twenty-four (24) permitted effluent discharge violations listed in Paragraph 16 above constitutes a separate violation for a total of twenty-four (24) separate violations of Part I Section A of the Permit and Ark. Code Ann. § 8-4-217(a)(3).

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall immediately implement Best Management Practices to operate the existing treatment system.
2. For upgrading the treatment system as necessary, Respondent shall comply with APC&EC Regulation 6.202, which covers application requirements for construction and operation of wastewater facilities.
3. Respondent shall achieve full compliance with the permitted effluent limits by June 30, 2018.
4. Respondent shall submit to ADEQ a report certified by a Professional Engineer (hereinafter P.E.) registered in the State of Arkansas stating that the facility is in compliance with the permitted effluent limits. This report shall be submitted to ADEQ no later than June 30, 2018.

5. Respondent shall implement and comply with the terms and milestone schedule contained in the CAP. The approved CAP, milestone schedule, and final compliance date of June 30, 2018 shall be fully enforceable as terms of this Order.

6. Respondent shall submit quarterly progress reports to ADEQ detailing the work completed as outlined in the approved CAP to achieve compliance with the permitted effluent limits. The first progress report shall be due on the 1st of the month following the effective date of the Order. The progress reports are due quarterly thereafter until the CAO is closed. The progress reports shall be sent to:

Arkansas Department of Environmental Quality
Water Division Enforcement Branch
5301 Northshore Drive
North Little Rock, AR 72118

7. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Three Thousand Two Hundred Dollars (\$3,200.00), or one-half of the full civil penalty of One Thousand Six Hundred Dollars (\$1,600.00) if this Order is signed and returned to the Water Division Enforcement Branch, ADEQ, 5301 Northshore Drive, North Little Rock, Arkansas, 72118-5317, prior to April 13, 2016. Even if the conditions for receiving a reduced penalty of One Thousand Six Hundred Dollars (\$1,600.00) have been met, failure to otherwise comply with this Order will result in the Penalty reverting to the full civil penalty of Three Thousand Two Hundred Dollars (\$3,200.00). Payment is due 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.

8. Failure to meet any requirement or deadline of this Order constitutes a violation of said Order. If the Respondent should fail to meet any such requirements or deadlines, the 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 the Respondent to comply with the requirements of this Order.

9. 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 the Respondent with the requirements or deadlines of this Order, the 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.

10. ADEQ may grant an extension of any provision of this Order, provided that the 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 the 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 the Respondent and the length of the delay attributable to such circumstances shall rest with the 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.

11. 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 (NOD) within the timeframe specified in writing by ADEQ constitutes a failure to meet the requirements established by this Order.

12. 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.

13. 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 the Respondent from any past, present, or future conduct which is not expressly addressed herein, nor does it relieve the Respondent of its responsibilities for obtaining any necessary permits.

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

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

16. The City Council of the 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 in the amount of Three Thousand Two Hundred Dollars (\$3,200.00). See Exhibit A.

SO ORDERED THIS 6th DAY OF May, 2016.

Becky W. Keogh
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

City of Hughes

BY: G.R. Collum, Mayor
(Signature)

G. R. Collum, MAYOR
(Typed or printed name)

TITLE: MAYOR

DATE: 04/21/16

RECEIVED
MAY 02 2016
POST

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RESOLUTION 001 - 2016

APR 29 2016
MINOR

The City of Hughes has been offered a Proposed Consent Administrative Order relative to the City of Hughes' Sewer Treatment Facility at 451 Jones Road in Hughes. The Proposed Consent Administrative Order calls for the City of Hughes to repair or rebuild the City's Sewer Treatment Facility and have a Professional Engineer certify that it is meeting all requirements of the City's permit to discharge the treated sewage into Crooked Bayou by June 30, 2018. The Arkansas Department of Environmental Quality who offered the CAO gave the following stipulations. 1. The Proposed Consent Administrative Order must be approved by the City Council after Council has reviewed it and approved every facet of it. 2. Proof must be shown that Council approved the payment of a Civil Penalty of \$3,200.00, or a payment of \$1,600.00 referred to as a Civil Penalty Assessment. The reduced amount is only offered if the check and the agreement to accept the CAO are received in hand by ADEQ in North Little Rock, Arkansas, by 4:00 P. M. on 13 April 2016 with the documentation that Council reviewed and approved the Proposed Consent Administrative Order. 3. Council must approve the Mayor and Clerk or Treasurer to sign the Proposed Consent Administrative Order as proof of its acceptance by the City Council. 4. Council must show proof that they appropriated the money with which to pay the Civil Penalty or the Civil Penalty Assessment. 5. Proof must be shown that the Council appropriated the money to pay for the repairs to the Sewer Treatment Facility, or as ADEQ refers to the repairs as "compliance activities".

THEREFORE, after thorough review of this Consent Administrative Order by each individual Alderperson during this meeting and before, motion was made by Alderman

Jon Tate, seconded by Alderman Jesse White to authorize the City of Hughes to approve acceptance of this Consent Administrative Order from ADEQ; to approve payment of the \$3,500.00 Civil Penalty or the \$1,600.00 Civil Penalty Assessment if arrangements can be made to get the material to ADEQ within the time limits advanced by ADEQ; to approve the Mayor and Clerk or Treasurer to sign the CAO and the checks necessary; to appropriate the money necessary with which to repair or transform the Treatment Facility into a working facility that will allow the discharge effluent to pass the requirements of ADEQ; to engage the services of a Professional Engineer to help in this entire endeavor.

The vote on the motion carried with the following Alderpersons voting for its passage

<u>Jon Tate</u>	<u>Jesse White</u>
<u>Rodolph Robinson</u>	<u>Thomas Campbell</u>
<u>Reverend Malcolm Curne</u>	

The following Alderpersons voted against passage of the motion.

Irene Combs
G. R. Collum, Mayor

Nathaniel Curne
ATTEST: Nathaniel Curne, Recorder-Treasurer

EXHIBIT
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