

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Mountain Pine
P.O. Box 301
Mountain Pine, AR 71956

LIS No. 18- *034*
Permit No. AR0021539
AFIN 26-00127

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 Mountain Pine (“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 facility (“facility”) located at 317 11th Street, Mountain Pine, Arkansas.
2. Respondent discharges treated wastewater to Glazypeau Creek, thence to the Ouachita River between Lake Ouachita and Lake Hamilton in Segment 2F of the Ouachita 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)(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. APC&EC Regulation 2.406 states, “True color shall not be increased in any waters to the extent that it will interfere with present or projected future uses of these waters.”

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), “[e]ach day of a continuing violation may be deemed a separate violation for purposes of penalty assessment.”

10. NPDES Permit Number AR0021539 (“Permit”) was issued to the Respondent on April 25, 2014. The Permit became effective on May 1, 2014, and expires on April 30, 2019.

11. On November 3, 2016, the Department conducted a routine Compliance Evaluation Inspection and SSO/Collection System Inspection of the facility. The inspection revealed the following:

- a. The secondary flow measurement instrument has not been maintained to measure within 10% of the true discharge. This failure violated Part III, Section C.2 of the Permit and therefore Ark. Code Ann. § 8-4-217(a)(3).
- b. Discharge Monitoring Reports (DMRs) have not been submitted for July 2016 and August 2016. This failure violated Part III, Section C.5 of the Permit and therefore Ark. Code Ann. § 8-4-217(a)(3).
- c. Inflow and Infiltration issues identified in the December 2015 Corrective Action Plan (CAP) had not been evaluated or corrected by the dates given in the CAP.
- d. Names of persons responsible for maintaining the satellite systems had not been determined.
- e. The effluent and receiving stream were documented on page 12 of the inspection report as being green in color. This is a violation of APC&EC Reg. 2.406.

12. On December 5, 2016, the Department notified Respondent of the inspection results. On December 13, 2016, the Department received an insufficient response from Respondent addressing the violations cited in the inspection report. On February 8, 2017, the Department received a sufficient response from Respondent addressing the violations cited in the inspection report.

13. The Department conducted a review of certified DMRs submitted by Respondent 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 January 1, 2015, through January 31, 2018:

- a. Six (6) violations for BOD, 5-day,
- b. Five (5) violations for pH,
- c. Six (6) violations for fecal coliform, and
- d. Four (4) violations for Carbonaceous BOD.

14. Each of the twenty-one (21) discharge limitation violations listed in Paragraph 13 above constitutes a separate permit violation for a total of twenty-one (21) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

15. The Department conducted a review of the Sanitary Sewer Overflow (SSO) Reports submitted in accordance with the Permit for the period of January 1, 2015, through January 31, 2018. The review revealed that Respondent reported twenty-two (22) SSOs. Each of the twenty-two (22) SSOs constitutes a separate violation of Part II Condition 5 of the Permit for a total of twenty-two (22) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

16. On October 20, 2017, Respondent submitted the Smoke Test Report detailing the results of the smoke testing conducted by Arkansas Rural Water Association on May 23, 2017.

17. On October 31, 2017, the Department and Respondent met to discuss the continuing effluent violations, collection system rehabilitation progress, and corrective actions to address the facility's violations, which are set forth in the Order below.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall, within thirty (30) calendar days of the effective date of this Order, submit to ADEQ, for review and approval, a comprehensive CAP developed by a Professional Engineer (PE) licensed in the state of Arkansas. The CAP shall include, at minimum, a

reasonable milestone schedule with a date of final compliance no later than December 31, 2020, and the CAP shall detail 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. Upon review and approval by ADEQ, Respondent shall comply with the terms, milestone schedule, and final compliance December 31, 2020 contained in this Order and the approved CAP. The milestone schedule and final compliance December 31, 2020 shall be fully enforceable as terms of this Order.

2. Respondent shall, within ninety (90) calendar days of the effective date of this Order, submit to ADEQ, for review and approval, a comprehensive Sanitary Sewer Flow Monitoring and Infiltration and Inflow (I/I) Study (“Study”) developed by a PE licensed in the state of Arkansas. The Study shall include, at minimum, a baseline for sanitary sewer flows, rainfall monitoring, an estimate of available sewer capacity, identification of sources of I/I, an estimation of I/I, and a plan and milestone schedule for reducing I/I with a date of final compliance no later than December 31, 2020. The Study shall detail the methods and best available technologies that will be used to correct the violations listed in Findings of Fact Paragraph 15 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, 2020. The milestone schedule and final compliance date of December 31, 2020 shall be fully enforceable as terms of this Order.

3. 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 final permitted effluent limits and Part II, Condition 5 of the Permit. Respondent shall

submit the final compliance report by January 31, 2021.

4. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of FOUR THOUSAND FOUR HUNDRED DOLLARS (\$4,400.00), or one-half of the full civil penalty of TWO THOUSAND TWO HUNDRED DOLLARS (\$2,200.00) if this Order is signed and returned to the Office of Water Quality Enforcement Branch, ADEQ, 5301 Northshore Drive, North Little Rock, Arkansas, 72118-5317, within twenty (20) days of receipt of this Order. Even if the conditions for receiving a reduced penalty of TWO THOUSAND TWO HUNDRED DOLLARS (\$2,200.00) have been met, failure to otherwise comply with this Order will result in the penalty reverting to the full civil penalty of FOUR THOUSAND FOUR HUNDRED DOLLARS (\$4,400.00). 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:

ADEQ, 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.

5. 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 that may be available to ADEQ by reason of failure by Respondent to comply with the requirements of this Order.

6. 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 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.

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

8. 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.

9. 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.

10. 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.

11. 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.

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

13. 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. 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 Mountain Pine

BY: Ricky Petty Sr.
(Signature)

Ricky Petty Sr.
(Typed or printed name)

TITLE: MAYOR

DATE: 3-26-18

Ordinance number 2018- 04

City of Mountain Pine

An ordinance authorizing the Mayor to approve a Consent Administrative Order on behalf of the City, and declaring an emergency.

WHEREAS, the City of Mountain Pine has received a letter from the Arkansas Department of Environmental Quality, finding a violation by the City of the Arkansas Water and Air Pollution Control Act (Ark. Code Ann., Sec. 8-4-201, et seq.);

AND, WHEREAS, the said Department has offered to enter into a Consent Administrative Order with the City;

AND, WHEREAS, the City finds it would be advantageous to enter into this proposed Order;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF MOUNTAIN PINE AS FOLLOWS:

The Mayor of the City of Mountain Pine is hereby authorized to sign the attached Consent Administrative Order on behalf of and for the City.

CONFLICT CLAUSE

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

VALIDITY CLAUSE

If for any reason, any portion of this ordinance be held invalid, such invalidity shall in no way affect the remaining portions thereof which are valid, said valid portions shall be and remain in full force and effect.

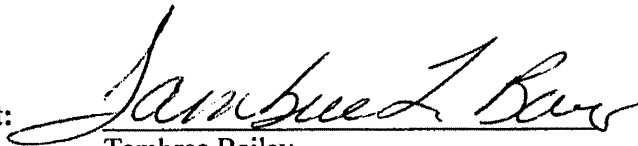
EMERGENCY CLAUSE

Because of the need for timely action to avoid a larger fine, an emergency is hereby declared to exist and this ordinance, being necessary for the immediate preservation of the public health, safety, and welfare, shall be in full force and effort from and after its passage and approval.

Passed:


RICK PETTY, SR., Mayor, City of Mountain Pine

Attest:


Tambrea Bailey,
Recorder/Treasurer