

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Pangburn
508 W. Main
Pangburn, AR 72121

LIS No. 17- 094
Permit No. AR0039233
AFIN 73-00056

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 Pangburn (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 112 Dripping Springs Road in Pangburn, White County, Arkansas.
2. Respondent discharges treated wastewater to the Little Red River, thence to the White River in Segment 4E of the White 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. 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 AR0039233 (Permit) was issued to the Respondent on April 25, 2011 as a permit renewal. The Permit became effective on May 1, 2011 and expired on April 30, 2016.

10. Part III, Section D, Condition 10 of the Permit required Respondent to submit a complete application for renewal at least one hundred eighty (180) days prior to the expiration of the Permit in order to continue the regulated activity past the expiration date.

11. Respondent submitted an application for renewal of the expiring permit on December 17, 2015, one hundred and thirty-five (135) days prior to the Permit's expiration date. Respondent submitted additional information on January 1, 2016 and February 3, 2016. The failure to submit a complete application at least one hundred eighty (180) days prior to the Permit expiration date violated Part III, Section D, Condition 10 of the Permit and therefore Ark. Code Ann. 8-4-217(a)(3).
12. On February 4, 2016, ADEQ issued a letter notifying the Respondent the renewal application was administratively complete.
13. On April 30, 2016, without being continued in accordance with APC&EC Regulation 6.201, NPDES Permit No. AR0039233 expired.
14. On May 17, 2016, the Office of Water Quality Compliance Branch conducted a Reconnaissance Inspection and verified that the facility was discharging odorous wastewater. This unpermitted discharge of wastewater violated Ark. Code Ann. § 8-4-217(b)(1)(E), and therefore violated Ark. Code Ann, 8-4-217(a)(3).
15. On May 4, 2017, the Department conducted a review of certified Discharge Monitoring Reports submitted by the Facility from April 1, 2013 through March 31, 2017 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:
 - a. Fourteen (14) violations for Biochemical Oxygen Demand;
 - b. One (1) violation for Fecal Coliform; and
 - c. Forty (40) violations for Total Suspended Solids.

17. Each of the Fifty Five (55) discharge limitation violations listed in Paragraph 14 above constitutes a separate permit violation for a total of Fifty Five (55) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

18. On August 17, 2016, ADEQ reissued NPDES Permit Number AR0039233 to Respondent. This permit became effective on September 1, 2016 and expires on August 31, 2021.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Within thirty (30) calendar days of the effective date of the Order, Respondent shall submit to ADEQ for review and approval a comprehensive Corrective Action Plan (CAP) developed by a Professional Engineer registered in the state of Arkansas. The CAP shall at minimum include a reasonable milestone schedule with a date of final compliance. The CAP shall detail the methods and best available technologies that will be used to correct the violations listed in Findings of Fact Paragraph 16 and prevent future violations. Upon review and approval by ADEQ, Respondent shall comply with the terms, milestone schedule and final compliance date. The approved CAP, milestone schedule and date of final compliance shall be fully enforceable as terms of this Order.

2. Respondent shall submit progress reports that detail the work completed from the approved CAP until such time that the project is completed. The first report shall be due within three (3) months of the ADEQ's written approval of the CAP. All subsequent reports shall be due on the 15th of the month following each calendar quarter.

3. Within thirty (30) calendar days of the date of final compliance established in the CAP, Respondent shall submit a report, through a PE licensed in the State of Arkansas, certifying that compliance with the permitted effluent limits has been achieved.

4. 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). 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

The reduced civil penalty is contingent upon the Respondent complying with the requirements of the Order and Agreement Section of this Order. In the event Respondent fails to fully comply with the Order and Agreement Section of this Order, or fails to pay the reduced sum of Two Thousand Dollars (\$2,000.00), the civil penalty will revert back to the amount of Three Thousand Dollars (\$3,000.00), the balance of which will be due and payable immediately to ADEQ. 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, 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 Respondent to comply with the requirements of this Order.

6. 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.

7. 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.

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 1.

12. The City Council of Respondent has authorized the Mayor and City Clerk/Treasurer to sign this Order on behalf of Respondent. See Exhibit 1.

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 the civil penalty set out in this Order. See Exhibit 1.

SO ORDERED THIS ^{24th}~~29th~~ DAY OF ^{November}~~August~~ ~~29~~, 2017.

Becky W. Keogh
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

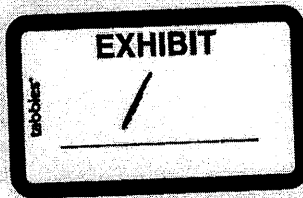
CITY OF PANGBURN

BY: David Wilson
(Signature)

David Wilson
(Typed or printed name)

TITLE: Mayor

DATE: 8-29-17



City of Pangburn

Resolution No. 2017-04

A RESOLUTION APPROVING A CONSENT ADMINISTRATIVE ORDER TO BE ENTERED INTO WITH THE ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY; AUTHORIZING THE MAYOR AND CITY RECORDER, ON BEHALF OF THE CITY, TO EXECUTE SAID ORDER; AND APPROPRIATING NECESSARY SUMS TO PAY THE PENALTY AS SET OUT IN THE ORDER.

WHEREAS, the Arkansas Department of Environmental Quality (ADEQ) has found that the City of Pangburn, Arkansas, has exceeded its wastewater treatment facilities' NPDES Permit effluent discharge limitations on numerous occasions, and such exceedances constitute a violation of the Arkansas Water and Air Pollution Control Act and the Federal Water Pollution Control Act; and

WHEREAS, to avoid the imposition of substantial civil penalties for each exceedance, ADEQ has proposed a Consent Administrative Order, assessing a civil penalty against the City in the sum of \$2,000.00, designated as a voluntary civil penalty; and

WHEREAS, the City, in acknowledgment of the noted violations, desires to enter into the Consent Administrative Order, which allows the City to develop a plan for maintaining compliance with the Permit.

NOW, THEREFORE, be it resolved by the City Council of Pangburn, Arkansas:


Section 1: That the Consent Administrative Order ("CAO") with ADEQ is hereby approved and the Mayor and City Recorder hereby are authorized and directed to

execute same on behalf of the City of Pangburn. The CAO shall be in substantially the form as presented to the Council, a copy of which is appended to this resolution.


Section 2: There is hereby appropriated the sum of \$2,000.00 to pay the voluntary civil penalty as provided in the CAO, and the City Recorder/Treasurer is authorized to expend said appropriated funds for the designated purpose.

Section 3: The Mayor be and he is hereby authorized to initiate all reasonable efforts and take all action deemed necessary to cause the city's wastewater treatment facility to become compliant with the permit effluent limitations. The Mayor is further authorized to take such further and additional actions as he deems necessary and appropriate to comply with the Consent Administrative Order.

ADOPTED AND EXECUTED THIS 28TH DAY OF SEPTEMBER, 2017.


MAYOR


ASSENTING COUNCIL MEMBER


ASSENTING COUNCIL MEMBER

ASSENTING COUNCIL MEMBER


ASSENTING COUNCIL MEMBER


ASSENTING COUNCIL MEMBER

ASSENTING COUNCIL MEMBER

ATTEST:

RECORDER/TREASURER

**MINUTES OF THE
PANGBURN CITY COUNCIL MEETING
SPECIAL MEETING
SEPTEMBER 28TH, 2017**

The Pangburn City Council held a special meeting on SEPTEMBER, 28TH, 2017 at the Municipal Building.

Mayor Wilson called the meeting to order at 7:40 p.m.

Roll call was as follows:

Alderman Jerry McElyea	Absent	Alderman Patience Cary	Present
Alderman Mike Marsh	Present	Alderman Ben Langley	Absent
Alderman Ron Strickland	Present	Alderman Jared Tackett	Present

PAY PENALTY: Alderman M. Marsh made a motion, seconded by Alderman R. Strickland, to pay Arkansas Department of Environmental Quality a \$2000.00 penalty for exceeding its wastewater treatment facilities' NPDES Permit effluent discharge limitations on numerous occasions. Exceeding these limitations constitute a violation of the Arkansas Water and Air Pollution Control Act and the Federal Water Pollution Control Act. The vote was 4-0 for the motion.


RESOLUTION : Alderman M. Marsh made a motion, seconded by Alderman P. Cary, to pass a Resolution to file a legal claim against L.E. Davis Construction Company (Contractor) for failure to complete construction of the City's water plant in accordance with required specifications. The vote was 5-0 for the motion with the Mayor voting.

UNIFORMS : Alderman P. Cary made a motion, seconded by Alderman J. Tackett, to purchase new casual and dress uniforms for policemen. The vote was 4-0 for the motion.

ADJOURN: Alderman M. Marsh made a motion to adjourn. This was seconded by Alderman P. Cary. The vote was 4-0 for the motion and the meeting was adjourned at 8:24 P.M.



Shirley Ramsey - Recorder/Treasurer



David Wilson - Mayor