

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Mena
520 Mena St.
Mena, AR 71953

LIS No. 18- 046
Permit No. AR0036692
AFIN 57-00423

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 Mena (“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 facility (“facility”) located approximately 1.5 miles southeast of Mena on County Road 53 and about a mile east of Arkansas Highway 8 in Polk County, Arkansas.
2. Respondent discharges treated wastewater to an unnamed tributary of Prairie Creek, thence to Prairie Creek, thence to the Ouachita River 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. 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 AR0036692 (“Permit”) was issued to Respondent on January 9, 2012. The Permit became effective on March 1, 2012, and expired on February 28, 2017.
10. On April 25, 2016, Respondent submitted an administratively complete application for the renewal of the Permit.

11. In the summer 2010, Respondent developed a Sanitary Sewer Evaluation Survey (SSES) through a Professional Engineer licensed in the State of Arkansas. The SSES was completed on May 14, 2012.
12. The Department conducted a review of the sanitary sewer overflows (SSO) and treatment bypasses reported by Respondent in accordance with the Permit for the period of October 1, 2014, through October 31, 2017. The review revealed the following:
 - a. Respondent reported sixty-two (62) SSOs. Respondent is permitted to discharge treated municipal wastewater from its facility. Respondent is not permitted to discharge untreated wastewater from its collection system. Each SSO constituted an unpermitted discharge. Each unpermitted discharge violated Ark. Code Ann. § 8-4-217(b)(1)(E) and therefore violated Ark. Code Ann. § 8-4-217(a)(3).
 - b. Respondent reported two (2) discharges of partially treated wastewater from an unpermitted outfall. These wastewater discharges resulted from bypasses of the sand filters, chlorine disinfection, and post aeration components of the treatment system that ultimately discharged from an unpermitted outfall. These unpermitted discharges of waste into the waters of the State violated Ark. Code Ann. § 8-4-217(b)(1)(E) and therefore violated Ark. Code Ann. § 8-4-217(a)(3).
13. On May 12, 2016, ADEQ sent Respondent a letter requesting the submission of a Corrective Action Plan (CAP) to address the on-going SSOs.
14. On May 14, 2016, Respondent submitted the SSES referenced in Paragraph 11 above.
15. On November 1, 2016, Respondent submitted a letter describing the corrective actions taken as part of the SSES and suggested additional actions to be taken to address the SSOs.

16. On December 14, 2017, the Department conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit. The review revealed the following violations of the permitted effluent discharge limits detailed in Part I, Section A, of the Permit from October 1, 2014, through October 31, 2017.

- a. Five (5) violations for Ammonia Nitrogen; and
- b. One (1) violation for Total Suspended Solids.

17. Each of the six (6) discharge limitation violations listed in Paragraph 16 above constitutes a separate permit violation for a total of six (6) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

18. On February 16, 2017, a meeting was conducted at the Department's offices in North Little Rock that included representatives of Respondent and the ADEQ Office of Water Quality. The purpose of the meeting was to discuss the continuing SSOs, unpermitted discharges and effluent violations. The Department and Respondent decided to resolve these issues with a consent administrative order.

19. On May 8, 2017, Respondent reported a Whole Effluent Toxicity (WET) Test failure for fathead minnow survival. Respondent reported the cause of the failure as excessive inflow and infiltration. Respondent passed the subsequent WET retests.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Within sixty (60) days of the effective date of this Order, Respondent shall, through a Professional Engineer (P.E.) licensed in the State of Arkansas, submit to the Department a Collection System Rehabilitation and Treatment System Evaluation Plan ("Plan"). The Plan shall at a minimum include an evaluation and summary of the completed actions performed in

accordance with the previous SSES, the corrective action necessary to address the collection systems capacity issues, a complete evaluation of the wastewater treatment plant to ensure the plant is capable of handling the stormwater and wastewater capacity and the corrective actions necessary to address the violations cited in Findings of Fact, Paragraphs 12a and 12b above. The Plan shall include a milestone schedule with definitive timelines for the completion of the remaining corrective actions and date of final completion of the corrective actions no later than June 1, 2028. Upon review and approval by ADEQ, Respondent shall comply with the milestone schedule and final date of compliance contained in the Plan. The approved Plan, milestone schedule, and date of completion shall be fully enforceable as terms of this Order.

2. Within six (6) months of the effective date of this Order, Respondent shall submit to ADEQ a progress report detailing the actions that have been taken to implement the Plan. At a minimum, the reports shall include a list of the corrective actions initiated and completed since the previous report, the number of SSOs that occurred during the reporting period, and a statement of the overall progress for the Plan. Respondent shall submit semi-annual progress reports thereafter until the Order is closed.

3. Respondent shall immediately comply with all permitted effluent limits, unless a CAP is submitted as provided in Paragraph 4 of this Order and approved by ADEQ. If Respondent can immediately comply with all permitted effluent limits, Respondent shall submit to the Department within thirty (30) days of the effective date of this Order written documentation certified by a P.E. that all effluent violations cited herein have been corrected and the facility is in compliance with the Permit.

4. If unable to immediately comply with all permitted effluent limits, Respondent shall, within sixty (60) calendar days of the effective date of this Order, submit to ADEQ, for review

and approval a comprehensive Corrective Action Plan (CAP) developed by a P.E.. The CAP shall, at minimum, include a reasonable milestone schedule, date of final compliance no later than March 31, 2019, and 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 contained in the CAP. The approved CAP, milestone schedule and date of final compliance shall be fully enforceable as terms of this Order.

5. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a negotiated penalty of Three Thousand Dollars (\$3,000.00). 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:

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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

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

14. 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 24th DAY OF May, 2018.

Becky W. Keogh
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

City of Mena

BY: George L. McKee
(Signature)

George L. McKee
(Typed or printed name)

TITLE: Mayer, City of Mena

DATE: May 15, 2018

RESOLUTION NO. 1346

A RESOLUTION APPROVING A PROPOSED CONSENT ADMINISTRATIVE ORDER WITH THE ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY REFERENCE ACTIONS NECESSARY TO COMPLETE A COLLECTION SYSTEM REHABILITATION PLAN FOR THE MENA WASTEWATER TREATMENT FACILITY AND AUTHORIZING THE MAYOR AND CITY CLERK/TREASURER TO EXECUTE THE ORDER ON BEHALF OF THE CITY OF MENA

WHEREAS, the City of Mena owns and operates a wastewater treatment facility; and

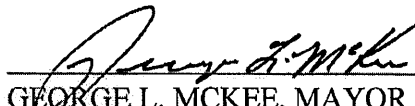
WHEREAS, the Arkansas Department of Environmental Quality (ADEQ) has inspected this facility and noted several violations that need corrective action; and

WHEREAS, ADEQ has issued a Proposed Consent Administrative Order which details the findings of fact, the order, and the agreement reference these violations.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MENA, ARKANSAS THAT:

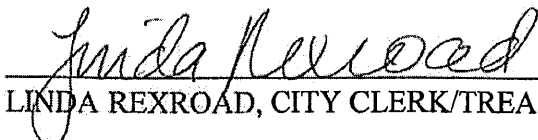
- Section 1:** The Mena City Council approves the Proposed Consent Administrative Order as submitted by the Arkansas Department of Environmental Quality.
- Section 2:** The Mayor and City Clerk/Treasurer are hereby authorized to execute the Consent Administrative Order on behalf of the City of Mena.
- Section 3:** The Mayor and City Clerk/Treasurer are hereby authorized to execute any other documents and supporting material necessary and incident to effectuate its purpose and intent.

PASSED AND APPROVED this 15th day of May, 2018.



GEORGE L. MCKEE, MAYOR

ATTEST:



LINDA REXROAD, CITY CLERK/TREASURER