

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Mountain View
P.O. Box 360
Mountain View, AR 72560

LIS No. 18- **041**
Permit Tracking No. ARG640093
AFIN 69-00011

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 View (“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 water treatment plant (“facility”) located at 571 Ruddle Road, Mountain View, Stone County, Arkansas.
2. Respondent discharges treated process water to Warren Hollow, thence to the White River in Segment 4F 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), “[e]ach day of a continuing violation may be deemed a separate violation for purposes of penalty assessment.”

9. NPDES General Permit Number ARG640000 (“Permit”) was issued on June 3, 2016, became effective on December 1, 2016, and expires on November 30, 2021. Coverage under the Permit was issued to Respondent on November 15, 2016, and is tracked as NPDES Permit Tracking Number ARG640093.

10. On September 28, 2017, the Department conducted a Reconnaissance Inspection of the facility. The inspection revealed the following:

- a. Respondent was using a portable pump and hose to discharge process water from the wet well. This discharge bypassed the permitted outfall, Outfall 101. The Notice of Coverage issued to Respondent under the Permit only allows discharges from Outfall 101. This unpermitted discharge violated the Permit and therefore violated Ark. Code Ann. § 8-4-217(a)(3).
- b. Respondent failed to report the above referenced unpermitted discharge to the Department. This failure violated Section 5.4.2 of the Permit and therefore violated Ark. Code Ann. § 8-4-217(a)(3).
- c. The sludge ponds and drying beds were in need of maintenance. Respondent's failure to properly operate and maintain the sludge ponds and drying beds violated Part 5.1 of the Permit and therefore violated Ark. Code Ann. § 8-4-217(a)(3).
- d. During the inspection, an effluent sample was collected by the ADEQ Office of Water Quality Compliance Branch Manager and was analyzed by the ADEQ laboratory for Total Suspended Solids (TSS). Under Part 2.1 of the Permit, the Daily Maximum limit for TSS is 30.0 mg/L. The laboratory analysis indicated the TSS during the discharge was 485.0 mg/L. This exceedance of the Daily Maximum limit for TSS violated Part 2.1 of the Permit and therefore violated Ark. Code Ann § 8-4-217(a)(3). Additionally, this exceedance of the Daily Maximum limit for TSS demonstrates that Respondent was not properly operating and maintaining the facilities to achieve compliance with the conditions of the Permit in violation of Part 2.1 of the Permit and therefore in violation of Ark. Code Ann. § 8-4-217(a)(3).

e. Respondent failed to give notice and provide plans and specifications to the Director for review and approval of two additional sediment basins added in 2016. This failure violated Part 7.1 of the Permit and therefore violated Ark. Code Ann. § 8-4-217(a)(3).

11. On October 26, 2017, the Department notified Respondent of the inspection results and requested a written response for each violation noted in the inspection report. On October 31, 2017, and on November 1, 2017, the Department received Respondent's responses to the violations cited in the inspection report.

12. On November 2, 2017, the Department requested copies of Respondent's analytical results, chain of custody forms, and flow records for the past three years.

13. On November 3, 2017, Respondent submitted the requested analytical results and chain-of-custody forms. Respondent did not submit the requested flow records.

14. On November 8, 2017, the Department conducted a conference call with Respondent.

15. On November 30, 2017, and again on December 15, 2017, the Department requested a status update on the progress of completion of the action items generated from the November 8, 2017 conference call. To date, Respondent has not provided an update for those action items.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall comply immediately with the Permit.
2. Respondent shall, within thirty (30) 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 Professional Engineer licensed in the state of Arkansas. The CAP shall, at minimum, include a complete evaluation of the treatment system, an evaluation of the daily average waste discharge flow, and a reasonable milestone schedule with a date of final

compliance no later than December 31, 2018. The CAP shall detail the methods, best available technologies, and any capital improvements that will be used to correct the violations listed in Findings of Fact Paragraph 10 and prevent future violations. Upon review and approval by ADEQ, Respondent shall comply with the terms, milestone schedule, and final compliance date contained in this Order and the approved CAP. The milestone schedule and final compliance date 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, the Respondent shall submit quarterly progress reports detailing the progress that has been made towards compliance with final permitted effluent limits. Respondent shall submit the final compliance report by January 31, 2019.

4. Within thirty (30) calendar days of the effective date of this Order, Respondent shall submit to ADEQ a Sludge Pond Survey with volume calculations.

5. Within sixty (60) calendar days of the effective date of this Order, Respondent shall submit to ADEQ their Standard Operating Procedures for sludge handling and monitoring, sampling, and flow wasting procedures.

6. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of THREE THOUSAND SEVEN HUNDRED DOLLARS (\$3,700.00), or one-half of the full civil penalty of ONE THOUSAND EIGHT HUNDRED FIFTY DOLLARS (\$1,850.00) 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. 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.

7. 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.

8. 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.

9. 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.

10. 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 respond adequately to such Notice of Deficiency within the timeframe specified in writing by ADEQ constitutes a failure to meet the requirements established by this Order.

11. 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.

12. 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.

13. 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.

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

15. 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 as set forth in this Order. See Exhibit A.

SO ORDERED THIS 24 DAY OF April, 2018.

Becky W. Keogh
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

CITY OF MOUNTAIN VIEW

BY: Roger Gardner
(Signature)

Roger Gardner
(Typed or printed name)

TITLE: MAYOR

DATE: 4-11-18