

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Danville  
P. O. Box 69  
Danville, AR 72833

LIS No. 19- 067  
Permit No. AR0022241  
AFIN 75-00037

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (“Order”) is issued pursuant to the authority of the Arkansas Water and Air Pollution Control Act (“the 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 Danville (“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 municipal wastewater treatment facility (“Facility”) located on Cottontail Lane, Danville, Yell County, Arkansas.
2. Respondent discharges treated wastewater to Petit Jean River, thence to the Arkansas River in Segment 3G of the Arkansas 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 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. The Department issued NPDES Permit Number AR0022241 (“Permit”) to Respondent on April 29, 2014. The Permit became effective on June 1, 2014, and expires on May 31, 2019.

Duty to Reapply

10. Part III, Section D, Condition 10 of the Permit requires Respondent to submit a complete permit renewal application at least 180 days prior to the expiration date of the Permit if the activity regulated by the Permit is to continue after the expiration date.

11. Respondent intends to operate this facility beyond the expiration date of the current permit, May 31, 2019.

12. On June 7, 2018 and September 5, 2018, Respondent was notified that the Permit would expire on May 31, 2019, and that in order to continue the regulated activity, a complete renewal application must be submitted no later than December 2, 2018.

13. On November 20, 2018, the Department received an incomplete Permit renewal application from Respondent. On November 26, 2018, ADEQ notified Respondent that its Permit renewal application was incomplete.

14. Respondent submitted additional information on December 2, 2018 and January 3, 2019. On January 8, 2019, the Department notified Respondent that its Permit renewal application was administratively complete.

15. The complete Permit renewal application was not received by December 2, 2018. Failure to submit the Permit renewal application by December 2, 2018, is a violation of Part III, Section D, Condition 10 of the Permit and therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

#### Discharge Monitoring Report Review

16. On February 11, 2019, the Department conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.

17. 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, 2016 through January 31, 2019:

- a. Five (5) violations for Fecal Coliform;
- b. Six (6) violations for Total Suspended Solids; and
- c. One (1) violation for Dissolved Oxygen.

18. Each of the twelve (12) discharge limitation violations listed in Paragraph 17 above constitutes a separate permit violation for a total of twelve (12) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

Consent Administrative Order LIS 09-138

19. On October 13, 2009, Respondent and the Department executed Order LIS 09-138.

20. On January 15, 2018, Respondent submitted a certification of completion of the Schedule of Implementation dated February 21, 2011, and incorporated by Order LIS 09-138.

**ORDER AND AGREEMENT**

WHEREFORE, the parties stipulate and agree as follows:

1. Upon the effective date of this Order, existing CAO LIS 09-138 shall be closed.
2. Respondent shall comply with the existing Permit until either the effective date of the Permit renewal or the effective date of the Permit termination.
3. Respondent shall immediately comply with all permitted effluent limits, unless a Corrective Action Plan (CAP) is submitted, as provided in Paragraph 4 of this Order, and approved by ADEQ, in which case, Respondent shall comply with all permitted effluent limits no later than December 31, 2019.
4. If unable to comply immediately with all permitted effluent limits, 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 licensed in the state of Arkansas. The CAP shall include, at minimum the methods and best available technologies that will be used to correct the violations listed in Findings of Fact Paragraph seventeen (17) and prevent future violations and include a reasonable milestone schedule with a date of final compliance no later than December 31, 2019. Upon review and approval by ADEQ, Respondent shall comply with the terms, milestone schedule, and final compliance date contained the

approved CAP. The terms of the CAP, milestone schedule, and final compliance date of December 31, 2019, shall be fully enforceable as terms of this Order.

5. 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 the final permitted effluent limits and Part I, Section A of the Permit. Respondent shall submit the final compliance report by December 31, 2019.

6. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Two Thousand Four Hundred Dollars (\$2,400.00), or one-half of the full civil penalty of One Thousand Two Hundred Dollars (\$1,200.00) 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) calendar 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:

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.

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, 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.

8. 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.

9. 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.

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 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.

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 that 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 31 DAY OF July, 2019.

Becky W. Keogh  
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

City of Danville

BY: Phillip W. Mandy  
(Signature)

Phillip W. Mandy  
(Typed or printed name)

TITLE: Mayor

DATE: June 25, 2019



RESOLUTION 19-07-18

**A RESOLUTION TO APPROVE CONSENT  
ADMINISTRATIVE ORDER OF ADEQ**

Whereas, The Arkansas Department of Environmental Quality, hereinafter ADEQ, has issued a findings of fact and assessed the City a civil penalty.

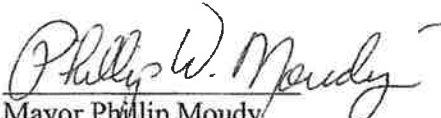
Whereas the City Council and the Mayor have received and reviewed the proposed CAO (Consent Administrative Order);

Whereas, the City of Danville agrees to the proposed settlement and hereby approves same and hereby authorize the Mayor and Clerk/Treasurer to sign the CAO on behalf of the City of Danville.


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

That the City of Danville hereby authorizes the Mayor and Clerk/Treasurer to execute the CAO (Consent Administrative Order) issued by ADEQ.

Passed and approved by a majority vote of the Danville City Council on the 18<sup>th</sup> day of July 2019.

  
Mayor Phillip Moudy

Attest:

  
Recorder