

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT  
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Greenway  
509B Davis Street  
Greenway, AR 72430

LIS No. 19-097  
Permit No. AR0051047  
AFIN 11-00013

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 and rules issued thereunder by Arkansas Pollution Control and Ecology Commission (APC&EC).

The issues herein having been settled by the agreement of the City of Greenway (“Respondent”) and the Division of Environmental Quality<sup>1</sup> (DEQ or “Division”), 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 plant (“Facility”) located on County Road 542, Greenway, Clay County, Arkansas.
2. Respondent discharges treated wastewater to an unnamed tributary of Big Slough Ditch, thence to Big Slough Ditch, thence to the St. Francis River in Segment 5A of the St. Francis River Basin.

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<sup>1</sup> Pursuant to Act 910 of 2019, the Arkansas Transformation and Efficiencies Act, the former Arkansas Department of Environmental Quality is now the Division of Environmental Quality in the newly-created Department of Energy and Environment.

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. DEQ 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 [DEQ].

7. Ark. Code Ann. § 8-4-103(c)(1)(A) authorizes DEQ 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 Division issued NPDES Permit Number AR0051047 (“Permit”) to Respondent on September 29, 2014. The Permit became effective on October 1, 2014, and expires on September 30, 2019.

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, September 30, 2019.

12. On October 4, 2018, and January 3, 2019, Respondent was notified that the Permit would expire on September 30, 2019, and that in order to continue the regulated activity, a complete renewal application must be submitted no later than April 4, 2019.

13. On April 3, 2019, Respondent requested an extension beyond the April 4, 2019 due date.

14. On April 9, 2019, the Division granted Respondent an extension for submission of their application until May 3, 2019.

15. On May 15, 2019, the Division received an incomplete permit renewal application from Respondent.

16. Respondent submitted additional information on May 16, 2019, and on May 21, 2019, the Division notified Respondent that its application for renewal was administratively complete.

17. The complete Permit renewal application was not received by May 3, 2019. Failure to submit a complete Permit renewal application by May 3, 2019, 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).

### **ORDER AND AGREEMENT**

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall comply with the Permit until either the effective date of the Permit renewal or the effective date of the Permit termination.

2. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of One Thousand Dollars (\$1,000.00), or one-half of the

full civil penalty of Five Hundred Dollars (\$500.00) if this Order is signed and returned to the Office of Water Quality Enforcement Branch, DEQ, 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 Division of Environmental Quality, and mailed to the attention of:

Division 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, DEQ shall be entitled to attorneys' fees and costs of collection.

3. 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 DEQ 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 DEQ by reason of failure by Respondent to comply with the requirements of this Order.

4. 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 DEQ, 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.

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

6. All requirements by the Order and Agreement are subject to approval by DEQ. Unless otherwise specified herein, in the event of any deficiencies, Respondent shall, within the timeframe specified by DEQ, submit any additional information or changes requested, or take additional actions specified by DEQ to correct any such deficiencies. Failure to respond adequately to such Notice of Deficiency within the timeframe specified in writing by DEQ constitutes a failure to meet the requirements established by this Order.

7. 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. DEQ 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.

8. Nothing in this Order shall be construed as a waiver by DEQ 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.

9. 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.

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

11. 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 17 DAY OF September, 2019.  
27 October 2019

Becky W Keogh  
BECKY W. KEOGH, DIRECTOR

BWK  
Signature

APPROVED AS TO FORM AND CONTENT:

City of Greenway

BY: WF McHaffey  
(Signature)

WF McHaffey  
(Typed or printed name)

TITLE: Mayor

DATE: 17 Sep 2019

POST  
OCT 16 2019  
MARKED

RECEIVED  
OCT 21 2019

B0001603H

9-17-19

2<sup>nd</sup> class Greenway Ave. held  
monthly meeting

R/T Julie Hicks here  
Mayor William McHaffey - here  
Councilman - Bostic - here  
Councilman - Boyd - here  
Councilman - Jarvis - here  
Councilman - Joomles - here

Councilman Bostic motion not to  
go thru last month minutes Councilman  
Jarvis 2<sup>nd</sup> all in favor - ye - opposed - no

Councilman Jarvis 1<sup>st</sup> the motion to ~~pass~~<sup>pass</sup>  
resolution for city R/T to pay \$ 500.00  
fine to ADEQ for not having necessary  
permits for operation of sewer plant  
Bostic 2<sup>nd</sup> motion passed unanimously  
This issue concerning permits has been  
resolved.

Councilman Joomles 1<sup>st</sup> the motion and  
2<sup>nd</sup> by Councilman Boyd to pass  
resolution no 2019-2 keeping a five  
mill general tax on property in 2019  
for collection in 2020 to avoid a  
reduction in general revenues  
passed unanimously

R/T Julie B Hicks

Mayor W McHaffey