

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Fountain Hill
P.O. Box 97
Fountain Hill, AR 71642

LIS No. 21- 088
Permit No. AR0042421
AFIN 02-00051

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 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 Fountain Hill (Respondent) and the Division of Environmental Quality¹ (DEQ), 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 plant (“facility”) located on Arkansas State Highway 160, Fountain Hill, Ashley County, Arkansas.
2. Respondent discharges treated wastewater to unnamed tributary of Flat Creek, thence to Flat Creek, thence to the Saline River, thence to Ouachita River in Segment 2C of the Ouachita River Basin.

¹ 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 (“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 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 rule 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. DEQ issued NPDES Permit Number AR0042421 (“Permit”) to Respondent on April 23, 2013. The Permit became effective on May 1, 2013, and expired on April 30, 2018. DEQ issued the renewal Permit on April 25, 2018. The Permit became effective on May 1, 2018, and expires on April 30, 2023.

10. On August 22, 2017, DEQ sent Respondent a letter requesting a Corrective Action Plan (CAP) to address the violations of the permitted effluent discharge limitations. The CAP was to have a milestone schedule, a final date of compliance no later than December 31, 2017, and be certified by a Professional Engineer (P.E.) licensed in the state of Arkansas.

11. On September 21, 2017, Respondent submitted a CAP to DEQ with a final compliance date of December 31, 2018, in order to complete the necessary construction.

12. On September 27, 2017, DEQ notified Respondent by letter that the CAP had been deemed adequate. DEQ requested monthly progress reports be submitted.

13. On October 25, 2017, December 18, 2017, January 24, 2018, February 26, 2018, April 24, 2018, June 21, 2018, July 21, 2018, and October 29, 2018, Respondent submitted progress reports detailing the progress being made towards final compliance.

14. On May 11, 2020, DEQ notified Respondent that Discharge Monitoring Reports (DMRs) and parameters were missing from NetDMR and requested that Respondent submit the missing DMRs to DEQ by May 25, 2020.

15. On October 14, 2020, DEQ conducted a review of certified DMRs submitted by Respondent 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 of the Permit from January 1, 2019, through August 31, 2020:

- a. Thirty-five (35) violations of Total Suspended Solids;
- b. Thirty-three (33) violations for Ammonia Nitrogen;
- c. Twenty-four (24) violations of Carbonaceous Biochemical Oxygen Demand (CBOD);

- d. Twenty (20) violations of Fecal Coliform Bacteria; and
- e. Thirteen (13) violations of Dissolved Oxygen.

These effluent violations indicate that the completed corrective actions from Respondent's September 21, 2017 CAP did not result in compliance with the Permit.

17. Each of the 125 discharge limitation violations listed in Paragraph 16 above constitutes a separate permit violation for a total of 125 separate violations of Ark. Code Ann. § 8-4-217(a)(3).

18. On October 14, 2020, DEQ sent Respondent a letter requesting a CAP to address the 125 violations of the permitted effluent discharge limitations for the period from January 1, 2019, through August 31, 2020. The CAP was to have a milestone schedule and a final date of compliance.

19. On November 2, 2020, Respondent submitted a CAP to DEQ with a final compliance date of March 31, 2021.

20. On March 11, 2021, DEQ notified Respondent that DMRs were missing from NetDMR. DEQ requested that Respondent submit the missing DMRs and a CAP update to DEQ by March 18, 2021. Respondent submitted the missing DMRs by March 18, 2021.

21. On March 29, 2021, Respondent submitted a CAP update to DEQ.

22. On April 12, 2021, DEQ requested Respondent submit a Revised CAP (RCAP) and milestone schedule by April 30, 2021.

23. On April 21, 2021, DEQ and Respondent met to discuss the repeated effluent violations and the corrective actions being taken to eliminate the violations.

24. On April 29, 2021, Respondent submitted a RCAP that included plans to perform a Sanitary Sewer Evaluation Study (SSES). A summary of findings and recommendations for repairs is planned to be complete by May 31, 2021.

25. On April 29, 2021, DEQ conducted a review of certified DMRs submitted by Respondent in accordance with the Permit.

26. 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 September 1, 2020, through May 31, 2021:

- a. Thirty-one (31) violations of Total Suspended Solids;
- b. Twenty-three (23) violations of Ammonia Nitrogen;
- c. Twenty-one (21) violations of CBOD;
- d. Seventeen (17) violations of Fecal Coliform Bacteria; and
- e. Eight (8) violations of Dissolved Oxygen.

27. Each of the 100 discharge limitation violations listed in Paragraph 26 above constitutes a separate permit violation for a total of 100 separate violations of Ark. Code Ann. § 8-4-217(a)(3).

28. The review of the DMRs also revealed that Respondent failed to submit the following DMRs timely:

- a. 2018: February, March, April, June, August, September, October, November, and December; and
- b. 2019: January through December; and
- c. 2020: January through May, and July through December; and
- d. 2021: January and May.

Failure to submit DMRs by the 25th of the month, on the month following the monitoring period end date, is a violation of Part III, Section C, Condition 5 of the Permit.

29. Each of the thirty-three (33) months Respondent failed to submit DMRs by the date set forth in Part III, Section C, Condition 5 of the Permit constitutes a separate Permit violation for a total of thirty-three (33) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall submit all DMRs in accordance with Part III, Section C, Condition 5 of the Permit.
2. Within thirty (30) calendar days of the effective date of this Order, Respondent shall submit to DEQ a written certification stating that Respondent is in full compliance with the Permit and will remain in compliance with the permitted effluent limits on a consistent basis.
3. Within sixty (60) calendar days of the effective date of this Order, Respondent shall develop and submit to DEQ, for review and approval, a SSES for its sanitary sewer collection system. The SSES must be certified by a P.E. licensed in the state of Arkansas.
 - a. The SSES should at minimum have the following elements:
 - i. Perform smoke testing in all areas of the collection system, beginning with highest priority areas;
 - ii. Perform televising of lines in areas deemed necessary based on smoke testing in order to locate leaks and to determine method of repair;
 - iii. Develop a plan to address deficiencies through rehabilitation, repair, or replacement;
 - iv. Develop a manhole inspection program, beginning in highest priority area; and

payable to DEQ on demand. Payment of the penalty shall be made payable to the Division of Environmental Quality, and mailed to the attention of:

DEQ, 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.

7. Failure to meet any requirement or deadline of this Order constitutes a violation of this 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.

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 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.

9. DEQ 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 DEQ 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 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.

11. This Order is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d) and APC&EC Rule 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 (30) 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 Rule 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 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.

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 as set forth in this Order. See Exhibit A.

SO ORDERED THIS 15 DAY OF SEPTEMBER, 2021.



JULIE LINCK, ADMINISTRATOR OF ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

City of Fountain Hill

BY: Ulrica Trotter

(Signature)

Ulrica Trotter

(Typed or printed name)

TITLE: MAYOR

DATE: 8/24/21

FOUNTAIN HILL CITY COUNCIL MEETING

SEPTEMBER 9, 2021

CALLED TO ORDER----- MAYOR ULRICA TROTTER

OPENED IN PRAYER--- HAROLD PRUITT

ROLL CALL--- Ulrica Trotter, Linda Riley, Mike Cox, Ricky Spruell, Harold Pruitt, Lee Tell Jenkins, Brian Slaughter, Amy Slaughter and Loretta Woods.

RODNEY GOVENS---

From Swyft Connect came to council meeting to talk about the Broadband that is coming to Fountain Hill. The upload and download speed will be 100mb by 100 mb. The plans will start at 49.99 a month. The installation fee of \$250.00 will be waived if you signa two or three contract.

They will put a cabinet at 3070 Hwy 425, Fountain Hill. This will be beside the water well. The company will lease it for \$75.00 a month.

**Brian Slaughter made a motion to approve this and Mike Cox 2nd .
Approved all ayes.**

WATER-----

We had two major leaks in the water main this month. PRO BORE, the company that is laying the core for the fiber optic cable that is coming through Fountain Hill Cut into our water main. The lightning struck a

pine tree on Hwy8 and also struck our water main. Both have been repaired.

The Mayor had to sign a CAO letter for violations of the Arkansas Water and Air Pollution Control Act, Ark. Code 8-4-201. Brian Slaughter made the motion to approve Mayor Trotter to sign the letter, Loretta Woods 2nd . All ayes.

The Council has decided to put the grant for the new fire station on hold. The filter system has to be changed, it hasn't been replaced in 18 yrs. THM has been out of compliance for the last two quarters. This has to be fixed. We are going to try to get a grant to cover the cost.

The Mayor talked to Mr. Streeter about donating the land to the city for the new fire station. This is still going as planned, just putting the grant on hold.

The flashing light on top of the water tank is out. Have to get someone to replace the bulb.

The minutes and financial statements were presented and approved, Brian Slaughter made motion to accept and Mike Cox 2nd . Approved all ayes.

Brian Slaughter made motion to adjourn, Mike Cox 2nd .