

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Flippin
P.O. Box 40
Flippin, AR 72634

LIS No. 21- 104
Permit No. AR0021717
AFIN 45-00021

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 Flippin (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 facility (“facility”) located at 222 East Industrial Drive, Flippin, Marion County, Arkansas.
2. Respondent discharges treated wastewater to Fallen Ash Creek, thence into the White River in Segment 4I of the White 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 AR0021717 (“Permit”) to Respondent on September 13, 2017. The Permit became effective on November 1, 2017, and expires on October 31, 2022.
10. On June 20, 2018, Respondent submitted a non-compliance letter with the non-compliance report to explain the Ammonia Nitrogen violation reported during the May 2018

monitoring period. The letter detailed the plans Respondent had to clean, camera, and inspect the entire collection system. The letter also included a final compliance date of November 2019, for repairs on the facility and a final compliance date of May 2019, to complete the collection system repairs.

11. On October 23, 2018, Respondent submitted an email to notify DEQ of a delay in construction and change of engineers working on the project.

12. On November 6, 2018, and November 19, 2018, Respondent submitted a preliminary timeline for planned improvements to the facility and collection system with a final compliance date of February 2021, and a request to terminate the current construction permit (AR0021717C).

13. On January 24, 2020, Respondent submitted a Memorandum of Agreement (MOA) between Arkansas Natural Resources Commission (ANRC) and Respondent setting forth the project funding and the planning and design schedule for the wastewater improvements. The MOA included a final completion date of October 1, 2021.

14. On February 28, 2020, DEQ conducted a compliance assistance inspection at the facility. The inspection consisted of a review of available records and an evaluation of the existing treatment facility. The inspection report noted that Respondent was participating in U.S. Environmental Protection Agency's (EPA) Circuit Rider Assistance Program and that EPA was assisting Respondent with development of a compliance plan.

15. On April 22, 2020, the Environmental Protection Agency (EPA) submitted the initial draft of Respondent's compliance plan developed under U.S. EPA's Circuit Rider Assistance Program.

16. On August 18, 2020, DEQ conducted a routine compliance evaluation inspection of the facility. During the inspection, DEQ documented the following violations:

- a. Numerous effluent violations were reported during the monitoring periods April 2019 through November 2019. These effluent exceedances are a violation of Part I, Section A of the Permit and therefore are a violation of Ark. Code Ann. § 8-4-217(a)(3).
- b. The secondary flowmeter had not been calibrated by a qualified technician since 2010. This failure is a violation of Part III, Section C, Condition 2 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
- c. Respondent failed to submit non-compliance reports (NCRs) for the effluent violations reported in 2019. Failure to submit NCRs is a violation of Part III, Section D, Condition 6.A of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

17. On September 1, 2020, DEQ notified Respondent of the inspection results via letter and requested Respondent submit a written response by September 16, 2020.

18. On September 15, 2020, DEQ received Respondent's response to the violations documented in the inspection report via email.

19. On March 23, 2021, DEQ sent an email requesting Respondent submit the missing NCRs for the following monitoring periods:

- a. 2018: May; June; September; December;
- b. 2019: February; March; April; June; July; and September.

20. On March 23, 2021, DEQ and Respondent spoke via telephone about the missing NCRs and Respondent stated it is awaiting approval from DEQ for the State Construction Permit. Respondent notified DEQ the NCRs would be submitted.
21. On March 31, 2021, Respondent submitted an update on the status of the improvement project in progress at the facility.
22. On May 17, 2021, DEQ and Respondent met to discuss the planned corrective actions and expected final date of compliance for the improvement projects at the facility and the collection system. DEQ requested Respondent submit an updated Corrective Action Plan (CAP).
23. On May 19, 2021, Respondent submitted an updated CAP with a final compliance date of November 30, 2022.
24. DEQ conducted a review of SSOs reported by Respondent in accordance with the Permit for the period of April 1, 2018, through April 30, 2021. The review revealed that Respondent reported sixty-eight (68) sanitary sewer overflows (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).
25. On July 29, 2021, DEQ conducted a review of certified Discharge Monitoring Reports (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 April 1, 2018, through June 30, 2021:

- a. Eighty-four (84) violations of Ammonia Nitrogen;

- b. Thirty (30) violations of Carbonaceous Biochemical Oxygen Demand;
- c. Two (2) violations of Total Suspended Solids; and
- d. One (1) violation of Fecal Coliform Bacteria.

27. Each of the 117 discharge limitation violations listed in Paragraph 26 above constitutes a separate permit violation for a total of 117 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 immediately comply with the updated CAP, dated May 19, 2021, and final compliance date of November 30, 2022. The updated CAP, milestone schedule, and final compliance date of November 30, 2022, shall be fully enforceable as terms of this CAO.
2. On or before December 31, 2022, Respondent shall submit a certification of compliance from a Professional Engineer (P.E.) licensed in the state of Arkansas, stating that the corrective actions listed in the Revised CAP dated May 19, 2021, have been completed and that Respondent is in compliance with the Permit.
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, Respondent shall submit quarterly progress reports detailing the progress that has been made towards compliance with the Permit.
4. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Three Thousand Four Hundred Dollars (\$3400.00), of which Three Thousand Four Hundred Dollars (\$3400.00) shall be conditionally **SUSPENDED** by DEQ. If Respondent fully complies with this Order, the suspended civil penalty of Three Thousand Four Hundred Dollars (\$3400.00) shall be **DISMISSED** by DEQ. The suspension and

subsequent dismissal of civil penalties is contingent upon Respondent complying with the terms of this Order. If Respondent violates any term of this Order, the full balance of Three Thousand Four Hundred Dollars (\$3400.00) shall be 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

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

13. 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 4th DAY OF OCTOBER, 2021.


JULIE LINCK, CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

City of Flippin

BY: 
(Signature)

Gerald Marberry
(Typed or printed name)

TITLE: City of Flippin Arkansas

DATE: SEPT 21 2021

City Council Meeting Minutes
Tuesday, September 21, 6:00 p.m.
Flippin City Hall

The regular meeting of the Flippin City Council was held Tuesday, September 21, 2021 at 6:00 p.m. at the Flippin City Hall. Members present were Heith Hogan, Tim McEuen, and Mayor Jerald Marberry. Many other citizens, city officials and department heads were also in attendance.

Mayor Marberry opened the meeting with the Pledge of Allegiance and followed with an opening prayer.

A motion was made to approve the August meeting minutes by Councilman Hogan and was seconded by Councilman McEuen. The motion passed unanimously.

City Accountant Travis Doshier gave the City's Financial Report. He reported that figures are up from last year and that most departments currently have better year-to-date income with lower expenses than was projected in their budgets for 2021.

Director of Public Works J.L. Wagoner made his monthly report to City Council and brought multiple items to the Council to discuss and approve. First, he presented the council members with a letter from Arkansas Office of Water Quality with an Administrative Order attached regarding assessment, suspension and dismissal of fines against the City of Flippin Sewer Department. The Council read and discussed the letter and administrative order at length. Councilman Hogan made a motion to accept the proposed order, agree to the allegations against the City of Flippin except item #16C and item #20, and accept full compliance with all other stipulations in the document. Councilman McEuen seconded the motion. All Council members in attendance voted in favor and the motion passed unanimously.

Second, the Director brought a concern to the Council regarding a landowner who deeded about one third of an acre to the City of Flippin before 2009. The landowner would like the City to be responsible for maintaining that strip of land or to deed the land back to the landowner. City of Flippin Attorney Pasting was consulted and agrees it is best to deed the property back to the current owner for multiple reasons. A motion was made by Councilman Hogan to deed the property back to the land owner, and the motion was seconded by Councilman McEuen. It passed unanimously.

Third, Director Wagoner talked to the Council about a request from Casey's lead engineer regarding the proposed plan to build inside city limits. The engineer has asked for a variance from the City's current twenty five foot setback allowance and requests a five foot setback for this project. Councilman McEuen made a motion to allow the five foot setbacks for the Casey's project and Councilman Hogan seconded that motion. The motion carried unanimously.

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Fourth, the Director gave a report of his bank balances and showed Council a preliminary budget regarding costs of work for his department to complete in order for the Casey's project to move forward. He lastly told the Council that a hearing to receive bids for the sewer plant will take place on Tuesday, October 5 at 10am at Flippin City Hall.

Police Chief Henry Campfield made his monthly report to City Council. He made it known that the City of Flippin has received funds from a Buyback Program and another grant to purchase new firearms and sell the City's current firearms in a move to save the department money moving forward. Ammunition for these guns will be more affordable and will allow City to keep more ammo in stock so policemen can put in more training hours. Councilman Hogan made a motion to give the Police Chief the ability to sell the old firearms within the legal limits outlined in the program and purchase new ones with the donated funds. Councilman McEuen seconded the motion, and it passed unanimously.

Campfield also reported that he has found one vehicle and will be going to look at another to replace police cars that are not in working order. He has businesses in place to apply graphics, attach lights and do other work required before they are put into service working within his current budget.

Fire Chief Glen Chapman made his monthly report to City Council. He reports calls have remained steady. He says most of the EMS calls are COVID related, but he is not planning to mandate vaccines. He has reassured the firemen that the department will cover the cost of vaccines and related testing.

Court Clerk Sandy Balogh made a request to Council to post a job opening for a Part Time Deputy Clerk. She said that her office and the main switchboard need assistance to handle phone calls and other matters related to fines and court paperwork. A second office with a dedicated phone line and computer are available. Councilman Cantrell requested the Mayor read his statement regarding the matter since he could not be in attendance. Mayor Marberry, Director Wagoner and Police Chief Campfield all voiced their opinions as well. Councilman McEuen made a motion to post a job opening for Part Time Deputy Clerk and Councilman Hogan seconded the motion. It passed unanimously.

Mayor Marberry requested \$2,000 from the City's general fund be made available for Flippin's Centennial Celebration to move forward as planned on October 1st and 2nd. A list of events was distributed to the Council, is available on the City's website and is being distributed by the City and Centennial Celebration's Facebook pages. A motion was made by Councilman McEuen to approve \$2,000 be used from general fund for the Centennial Celebration. It was seconded by Councilman Hogan and passed unanimously.

Citizen Margaret Ott asked permission from the Council to hook up her food truck to power at the marquee on City property once a week. After much discussion on the matter, the City decided to opt out at this time.

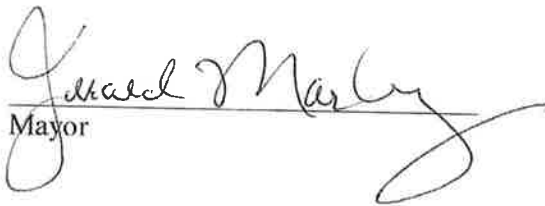
Mayor Marberry asked the Council and those in attendance if there is any new business to discuss.

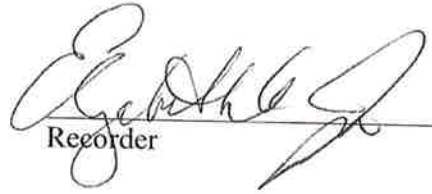
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A new citizen asked permission to open a garage to do restorations at his home. His property is currently zoned as residential. The Council spoke on the matter; they will discuss the idea with planning and zoning and revisit the issue at a later date.

Mayor Marberry and Director Wagoner want to bring attention to all the hard work that Stacy Foster has done leading up to Flippin's Centennial Celebration. The members of the Council all voiced their appreciation as well.

Councilman Hogan made a motion to adjourn the meeting and Councilman McEuen seconded the motion. It passed unanimously, and the meeting was adjourned.


Mayor


Recorder

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