

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Flushing Meadows Utility Operating Company, LLC
PO BOX 179122
St. Louis, MO 63117

LIS No. 19- 051
Permit No. AR0048879
AFIN 23-00461

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 Flushing Meadows Utility Operating Company, LLC (“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 has executed a contract to purchase a wastewater treatment plant (“Facility”), located at 77 Brewer Road, Conway, Faulkner County, that discharges treated wastewater to an unnamed tributary of Gold Creek, thence to Gold Creek, thence to Lake Conway, thence to Palarm Creek, thence to the Arkansas River in Segment 3F of the Arkansas River Basin.
2. The Facility is regulated pursuant to the National Pollutant Discharge Elimination System (NPDES).

3. ADEQ initially issued NPDES Permit Number AR0048879 ("Permit") to the previous operator of the Facility with an effective date of March 1, 2005. The most recent renewal of the Permit was issued on July 17, 2015, with an effective date of August 1, 2015, and expiration date of July 31, 2020.

4. Respondent has contracted to purchase the Facility with a closing date to be no later than sixty (60) days after the execution of this Order, and to take responsibility for the Facility at closing by complying this Order.

5. On December 13, 2018, Respondent submitted a proposed Corrective Action Plan (CAP) with a milestone schedule for the Facility. The proposed milestone schedule in the CAP would begin on the closing date of the sale of the Facility.

6. ADEQ has requested that Respondent submit an update to the CAP within thirty (30) calendar days of the closing date. The updated CAP shall include an interim operating plan to address the Facility's permit violations and a study of alternatives, including the feasibility of connecting the Facility to Conway Corporation's wastewater treatment system.

ORDER AND AGREEMENT

1. At least ten (10) days before the closing date, Respondent shall provide ADEQ with all documents required by ADEQ for the Permit to be transferred to Respondent.

2. Respondent shall take responsibility for the Facility at closing by complying this Order.

3. ADEQ agrees to transfer the Permit to Respondent once Respondent has provided the required documentation for the transfer, the civil penalty has been paid, and the sale of the Facility to Respondent has successfully concluded.

4. Within thirty (30) calendar days of closing, Respondent shall submit an updated CAP to ADEQ. The updated CAP shall be developed by a Professional Engineer licensed in the state of

Arkansas and shall include, at minimum, an interim operating plan, a study of alternatives that includes an evaluation of connecting the sewer system to Conway Corporation, and a reasonable milestone schedule with a date of final compliance no later than July 1, 2021. Upon review and approval by ADEQ, Respondent shall comply with the terms, milestone schedule, and final compliance date contained the approved CAP. The milestone schedule and final compliance date in the approved CAP shall be fully enforceable as terms of this Order.

5. 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.

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 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.

7. 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.

8. 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.

9. This Order is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d) and APC&EC Regulation 8.405. This Order is effective upon the Director's signature. ADEQ retains the right and discretion to rescind this Order based on comments received within the thirty-day public comment period. 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.

10. 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.

11. By virtue of the signature appearing below, the individual represents that he or she is an Officer of Respondent being duly authorized to execute and bind the entity to the terms contained herein. Execution of this Order by an individual other than an Officer of the entity shall be accompanied by a resolution granting signature authority to said individual as duly ratified by the governing body of the entity.

SO ORDERED THIS 09 DAY OF May, 2019.

Becky W. Keogh
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

Flushing Meadows Utility Operating Company, LLC

BY: [Signature]
(Signature)

Sosin Co
(Typed or printed name)

TITLE: President

DATE: 5/16/19