

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Atkins
 PO Box 128
 Atkins, AR 72823

LIS No. 19-074

City of Atkins – South Wastewater Treatment Plant
 and

Permit No. AR0034673
 AFIN 58-00878

City of Atkins – North Wastewater Treatment Plant

Permit No. AR0034665
 AFIN 58-00043

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 Atkins (“Respondent”) and the Division of Environmental Quality¹ (DEQ or “Division”), it is hereby agreed and stipulated that the following FINDINGS OF FACT and ORDER AND AGREEMENT be entered.

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.

FINDINGS OF FACT

1. Respondent operates a municipal wastewater treatment plant located at SE 15th Street, approximately one quarter mile off Highway 105, Atkins, Pope County, Arkansas (“South facility”).
2. Respondent discharges treated wastewater from its South facility to Horsehead Branch, thence to Galla Creek, thence into the Arkansas River in Segment 3F of the Arkansas River Basin.
3. Respondent operates a municipal wastewater treatment plant located at the east end of NE 4th Street, Atkins, Pope County, Arkansas (“North facility”).
4. Respondent discharges treated wastewater from its North facility into the Arkansas River in Segment 3F of the Arkansas River Basin.
5. Respondent is regulated pursuant to the National Pollutant Discharge Elimination System (NPDES).
6. 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).
7. 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.
8. 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].

9. 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.

10. 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.”

11. The Division issued NPDES Permit Number AR0034673 (“South Permit”) to Respondent on September 19, 2017. The South Permit became effective on October 1, 2017, and expires on September 30, 2022.

12. The Division issued NPDES Permit Number AR0034665 (“North Permit”) to Respondent on July 25, 2018. The North Permit became effective on August 1, 2018, and expires on July 31, 2023.

13. Respondent is permitted to discharge treated municipal wastewater from Outfall 001 at the South facility and from Outfall 001 at the North facility in accordance with the South Permit and North Permit, respectively. Respondent is not permitted to discharge untreated wastewater from its collection system, ponds, or equalization basin.

14. On April 27, 2018, the Division conducted a review of the sanitary sewer overflows (SSOs) and treatment bypasses reported by Respondent in accordance with the North Permit and the South Permit during the period of March 1, 2013 through April 25, 2018. The review revealed the following violations:

- a. Respondent reported nine (9) unpermitted discharges totaling more than 3,000,000 gallons of partially treated or untreated wastewater from the equalization basin levee at the South facility. Respondent is not permitted to discharge from the equalization basin levee at the South facility. Each of the nine (9) unpermitted discharges violated Part I Section A of the South Permit and therefore violated Ark. Code Ann. § 8-4-217(a)(3).
- b. Respondent reported three (3) SSOs from the South facility collection system totaling 5,500 gallons of untreated wastewater. Respondent is not permitted to discharge untreated wastewater from the collection system. Each of the three (3) SSOs constitutes an unpermitted discharge that violated Part I Section A of the South Permit and therefore violated Ark. Code Ann. § 8-4-217(a)(3).
- c. Respondent reported one (1) unpermitted discharge of more than 300,000 gallons of partially treated or untreated wastewater from the lower pond of the North facility. Respondent is not permitted to discharge untreated wastewater from the ponds. This event violated Part I Section A of the North Permit and therefore violated Ark. Code Ann. § 8-4-217(a)(3).
- d. Respondent reported fifteen (15) SSOs from the North facility collection system totaling more than 266,000 gallons of partially treated or untreated wastewater. Respondent is not permitted to discharge partially treated or untreated wastewater from the collection system. Each of these fifteen (15) SSOs constitutes an unpermitted discharge that violated Part I Section A of the North Permit and therefore violated Ark. Code Ann. § 8-4-217(a)(3).

15. On April 27, 2018, the Division sent a letter to Respondent and requested a corrective action plan (CAP) to address the SSOs and treatment bypasses. The CAP was due to the Division by June 29, 2018.

16. On June 15, 2018, Respondent requested a meeting with the Division.

17. On June 28, 2018, the Division, Respondent, and McClelland Engineers, Inc., Respondent's engineers, met at DEQ headquarters in North Little Rock to discuss the CAP, SSO, and treatment bypass issues. The Division extended the due date of the CAP to July 31, 2018.

18. On July 26, 2018, DEQ received a bypass report for the South facility. The Division requested additional information on July 26, 2018 by email. On September 20, 2018, additional information was received and deemed adequate.

19. On July 30, 2018, Respondent submitted a CAP with final compliance date of December 31, 2029.

20. On August 20, 2018, the Division notified Respondent by email that the milestones in the CAP, excluding the final date of compliance, were approved with additional conditions, which were set forth in the email.

21. On October 5, 2018, the Division received a quarterly progress report from McClelland Consulting Engineers, Inc. on behalf of Respondent detailing their progress on the CAP. On October 24, 2018, the Division notified Respondent by email that the quarterly report received on October 5, 2018 was adequate.

22. On January 25, 2019, the Division received a quarterly progress report from McClelland Consulting Engineers, Inc. on behalf of Respondent detailing their progress on the CAP. The report was adequate.

23. On May 2, 2019, the Division received a quarterly progress report from McClelland Consulting Engineers, Inc. on behalf of Respondent detailing their progress on the CAP. The report was adequate.

24. On July 2, 2019, DEQ mailed a proposed CAO to Respondent.

25. On July 11, 2019, the Division received a response to the proposed CAO with a request for penalty reduction.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall comply with the approved CAP, including the additional conditions detailed by the Division on August 20, 2018.
2. On or before April 30, 2020, Respondent shall submit to the Division, for review and approval, a revised Sanitary Sewer Survey and Evaluation Study (SSSES), stamped by a Professional Engineer licensed in the state of Arkansas. The SSSES shall be used to provide a Sanitary Sewer Remediation Plan (SSRP) that will detail the methods and best available technologies that will be used to correct the violations listed in Findings of Fact Paragraph 14 and include a milestone schedule and final compliance date for remediating the collection systems, reducing inflow and infiltration, eliminating the causes of the facilities' bypasses and SSOs, and preventing future violations. Respondent shall submit the SSRP to the Division for review and approval on or before June 30, 2020.
3. Upon review and approval of the SSRP by DEQ, Respondent shall comply with the terms, milestone schedule, and final compliance date in the approved SSRP. The milestone schedule and final compliance date in the approved SSRP shall be fully enforceable as terms of this Order.

4. Respondent shall submit quarterly progress reports by the 15th day of the month following the last day of each calendar quarter for a period lasting until this Order is closed. The progress reports shall detail the milestones completed, milestones in progress, and a summary of progress made towards final compliance with the Permits.

5. Respondent shall submit a final compliance report certified and stamped by a Professional Engineer licensed in the state of Arkansas by the final compliance date in the approved SSRP.

6. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Three Thousand Two Hundred Dollars (\$3,200.00) of which One Thousand Six Hundred Dollars (\$1,600.00) shall be conditionally SUSPENDED by DEQ. Payment of One Thousand Six Hundred Dollars (\$1,600.00) is due within thirty (30) calendar days of the effective date of this Order, 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

The suspension and dismissal of civil penalties is contingent upon the Respondent complying with the terms of this Order. If Respondent fully complies with this Order, the suspended civil penalty of One Thousand Six Hundred Dollars (\$1,600.00) shall be DISMISSED by DEQ. If Respondent violates any term of this Order, or fails to pay the reduced sum of One Thousand Six Hundred Dollars (\$1,600.00), the full balance of Three Thousand Two Hundred Dollars (\$3,200.00) shall become immediately due and payable to DEQ. 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 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.

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 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.

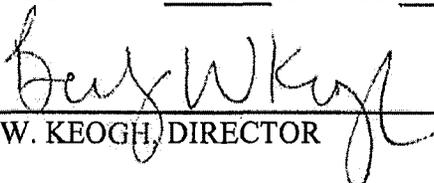
12. Nothing in this Order shall be construed as a waiver by DEQ of its enforcement authority over alleged violations not specifically addressed herein. Also, this Order does not exonerate Respondent from any past, present, or future conduct which is not expressly addressed herein, nor does it relieve 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 22 DAY OF August, 2019.



BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

City of Atkins

BY: 

(Signature)

ROWDY SWEET

(Typed or printed name)

TITLE: MAYOR

DATE: 8/7/19

RESOLUTION NO. 2019-R-02

“BE IT RESOLVED BY THE CITY COUNCIL OF ATKINS, COUNTY OF POPE, STATE OF ARKANSAS, A RESOLUTION ALLOWING THE MAYOR AND CITY CLERK TO ENTER INTO A CONSENT ADMINISTRATIVE ORDER PURSUANT TO A.C.A. 8-4-201”

WHEREAS, a certain Consent Administrative Order (CAO) has been proposed to the City of Atkins by the Arkansas Department of Environmental Quality to resolve an issue with two wastewater treatment sites located in Atkins, Arkansas.

NOW THEREFORE BE IT RESOLVED that the Atkins City Council hereby approves and authorizes the Mayor and Clerk to sign and consent to the above referenced CAO on behalf of the City of Atkins and to execute such documentation necessary to effectuate the terms therein.

DATE: July 9, 2019

APPROVED:

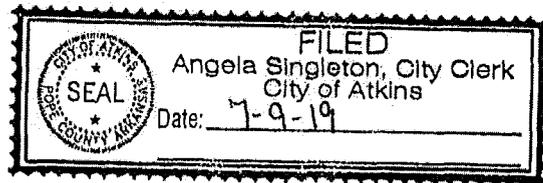


ROWDY SWEET, MAYOR
DATE SIGNED: July 9, 2019

ATTEST:


CITY CLERK

VOTES FOR: 4 VOTES AGAINST: 0
ABSTAIN: 0 PRESENT: 4 ABSENT: 3



The Atkins City Council met July 9, 2019 at City Hall at 7 pm. Mayor Rowdy Sweet called the meeting to order. Invocation was given by Daniel Dunn. The Pledge of allegiance was recited.

The Clerk called the roll. Attending were Mayor Rowdy Sweet, City Clerk Angela Singleton, City Attorney Clay McCall. Aldermen present were Bro Price, Daniel Dunn, Tim Waddle. Aldermen absent were Sean Rehm, Raymond Pearce, JoAnn Spence. Visitors: See attached sheet.

Bro Price moved to approve minutes of the prior meeting. Tim Waddle seconded the motion.

Motion Carried 4-0

Committee Reports:

Police: Chief Stephen Pack reported a total of 87 citations issued and a total of \$7958.00 in fine collections for the period of 6/11/2019 thru 7/9/2019.

Street: Al Berry is trying to get flash lights on city vehicles. Department of Labor Inspector will be inspecting the city on the 17th of July. She will be inspecting the trucks and the backup beepers.

Mayor Report: FEMA has set up in town for citizens who need assistance.

Water/Sewer

Old Business: Bro Price made a motion to place new item on the agenda. Tim Waddle seconded the motion.

Motion Carried 4-0

Mayor Sweet received a letter from ADEQ proposing a Consent Administrative Order (CAO) for violations at two of the waste water treatment sites. Included with proposal was Resolution 2019-R-02.

Bro Price moved to approve Resolution 2019-R-02. Tim Waddle seconded the motion. Vote was:

Bro Price	Yes	Tim Waddle	Yes
Daniel Dunn	Yes	Mayor Sweet	Yes

Mayor Sweet then presented the council with the Work Order No. 19 from McClelland. This Work Order amends Articles 1, 2, and 5 of the Agreement executed on April 10, 2000. This Work Order is for a Corrective Active Plan on the sewer line and both waste water treatment plants. For full details on the Work Order, please see attached.

Daniel Dunn made the motion to move forward with Work Order No. 19. Bro Price seconded the motion.

Motion Carried 4-0

Mayor Sweet also brought forth to the council the income and expenses for the months of January 2019 to June 2019 for the water and sewer. In the coming months, water rates will need to be re-evaluated. Mayor Sweet will be comparing rates of other surrounding towns and will be presenting the council with new proposed rates.

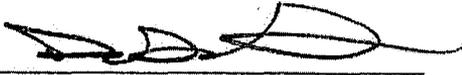
City New Business: Robert Travis came before the council, on behalf of the Atkins Masonic Lodge, requesting the proper procedure on how to close a city street. City Attorney Clay McCall stated research will need to be conducted at the courthouse to see about abandoning the property. Mr. Travis also stated the Masonic Lodge is in the process of purchasing property, and would like to take the proper steps for this purchase.

Mayor Sweet is reviewing the policies in the employee handbook. He is working with City Attorney McCall and the Municipal League on the correct procedures on the update. One update will be the employee drug testing and the other is safety sensitivity. The Mayor will also be changing the wording on how compensation time is to be used and how over-time will be used.

Announcements: Chief Pack was asked how C&C Wrecker could be placed on our rotation for calls. Chief Pack has done research to see about an ordinance and could not find one pertaining to this procedure. Chief Pack also stated in the past, the wrecker service had to have a lot within city limits in order to be placed on the rotation list. The Mayor and Chief will look further to see if there is an ordinance or certain procedure.

Bro Price moved to approve the payments of the City expenses listed on the City General Bank Register and Water Expenses. Tim Waddle seconded the motion. Motion Carried 4-0

Daniel Dunn moved the meeting adjourn. Tim Waddle seconded the motion. Motion Carried 4-0



Mayor, Rowdy Sweet



City Clerk, Angela Singleton

