

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Carthage  
P.O. Box 17  
Carthage, AR 71725

LIS No. 18- 080  
Permit No. AR0033715  
AFIN 20-00033

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 the City of Carthage (“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 operates a municipal wastewater treatment facility (“facility”) located on Bypass Road in the City of Carthage, Dallas County, Arkansas.
2. Respondent maintains a wastewater collection system (“collection system”) which feeds into the facility. The collection system consists of three (3) lift stations, each of which contain two (2) pumps.

3. Respondent discharges treated wastewater to an unnamed tributary of Matthews Creek, thence to Matthews Creek, thence to Lawrence Moro Creek, thence to Moro Creek, thence to Moro Bay, thence to the Ouachita River in Segment 2D of the Ouachita River Basin.
4. Respondent is regulated pursuant to the National Pollutant Discharge Elimination System (NPDES).
5. 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).
6. ADEQ 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.
7. 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 [ADEQ].
8. Ark. Code Ann. § 8-4-103(c)(1)(A) authorizes ADEQ 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.
9. 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.”

### Permit Renewal Application

10. NPDES Permit Number AR0033715 ("Permit") was issued to Respondent on May 29,, 2013. The Permit became effective on June 1, 2013, and expired on May 31, 2018.
11. 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.
12. Respondent intends to operate this facility beyond the expiration date of the current permit, May 31, 2018.
13. On June 2, 2017, and September 1, 2017, Respondent was notified their Permit would expire on May 31, 2018, and in order to continue the regulated activity, a complete renewal application must be submitted no later than December 2, 2017.
14. On November 21, 2017, Respondent submitted an incomplete Permit renewal application that required additional information, which ADEQ requested and received on December 21, 2017 and January 4, 2018. The Permit application was deemed administratively complete on January 4, 2018.
15. The complete Permit renewal application was not received by December 2, 2017. Failure to submit the complete Permit renewal application by December 2, 2017, 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).

Compliance and Collection System Inspection

16. On December 13, 2016, the Department conducted a routine compliance inspection and sanitary sewer overflow inspection of the facility. The inspection revealed the following violations:

- a. Respondent failed to take an influent sample for CBOD5 and TSS within the preceding year in order to calculate removal efficiency and ensure compliance with the requirement of at least eighty-five percent (85%) removal. This failure violated Part II, Condition 2 of the Permit and therefore Ark. Code Ann. § 8-4-217(a)(3).
- b. The following conditions were observed which constituted improper operation and maintenance of the facility by Respondent and therefore violated Part III, Section B, Condition 1.A of the Permit and therefore Ark. Code Ann. § 8-4-217(a)(3):
  - i. The third cell of the lagoon system was overgrown with vegetation;
  - ii. Fire ants were not managed so as to prevent burrowing and damage to levees;
  - iii. One of the two pumps used for delivering water from the lagoon system to the intermittent sand filters was not in operation;
  - iv. All three intermittent sand filters were overgrown with vegetation;
  - v. The first chamber of the chlorine contact chamber required cleaning to remove duckweed;
  - vi. A milk crate was being used to hold chlorine tablets rather than a proper chlorinator for disinfection;
  - vii. The second chamber of the chlorine contact chamber, including the weir box, required cleaning;
  - viii. The secondary flow meter was not in operation; and

- ix. The inoperable secondary flow meter was not in the correct location to properly measure flow.
- c. The following conditions were observed which constituted improper retention of records by Respondent and therefore violated Part III, Section C, Condition 7 of the Permit and therefore Ark. Code Ann. § 8-4-217(a)(3):
  - i. Daily logs and inspection and monitoring reports were not maintained, and
  - ii. Respondent did not possess calibration records for the secondary flow meter more recent than June 2013.
- d. The following conditions were observed which constituted improper monitoring procedures by Respondent and therefore violated Part III, Section C, Condition 3 of the Permit and therefore Ark. Code Ann. § 8-4-217(a)(3):
  - i. Holding times for DO and pH exceeded the fifteen minutes which is required by their respective methods;
  - ii. Flow was not being measured during the sample collections;
  - iii. Chain of Custody forms (COCs) did not include DO calibration results; and
  - iv. COCs did not include the temperature of the samples at the time they were received by the laboratory.
- e. The following conditions were observed which constituted improper operation and maintenance of the collection system. These conditions violated Part III, Section B, Condition 1.A of the Permit and the “10 States Standards,” which are adopted in APC&EC Regulation 6, and therefore violated APC&EC Regulation 6 and Ark. Code Ann. § 8-4-217(a)(3).
  - i. Respondent failed to maintain daily logs documenting lift station inspections;

- ii. Respondent failed to provide backup power or pumps for lift stations;
- iii. Respondent failed to maintain postings of up-to-date and legible contact information at each lift station;
- iv. Respondent failed to maintain audio and visual alarms at each lift station;
- v. Respondent allowed one (1) pump at Lift Station #1, two (2) pumps at Lift Station #2, and one (1) pump at Lift Station #3 to remain in an inoperable state; therefore, four (4) of the six (6) pumps in the collection system were allowed to remain in an inoperable state; and
- vi. Respondent failed to provide a protective housing for the electrical equipment at Lift Station #3.

#### Effluent Violations

17. The Department conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.

18. 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 October 1, 2014, through September 30, 2017:

- a. Two (2) violations for Carbonaceous Biochemical Oxygen Demand;
- b. Two (2) violations for Total Suspended Solids;
- c. Two (2) violations for Ammonia Nitrogen; and
- d. One (1) violation for pH.

19. Each of the seven (7) discharge limitation violations listed in Paragraph 13 above constitutes a separate permit violation for a total of seven (7) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

### Violation of Wastewater Licensing Requirements

20. Part II, Condition 1 of the Permit requires that the operator of the facility be licensed as a Class II wastewater operator (at minimum) by the State of Arkansas in accordance with APC&EC Regulation 3.

21. During a phone call between Respondent and ADEQ Water Enforcement on September 20, 2017, Respondent provided the name of their current operator. A search conducted by ADEQ Office of Water Quality Enforcement in the ADEQ Licensed Wastewater Operator Database revealed that the operator cited by Respondent had not been issued a wastewater license by the State of Arkansas. This condition violates Part II, Condition 1 of the Permit and therefore Ark. Code Ann. § 8-4-217(a)(3).

### Corrective Action

22. On January 18, 2017, the Department notified Respondent of the inspection results and requested a written response for each violation noted in the inspection report. On February 2, 2017, the Department received a response from Respondent requesting an unspecified amount of additional time to correct the violations cited in the inspection.

23. On February 28, 2017, the Department sent a letter to Respondent requesting a Corrective Action Plan (CAP) to address the violations cited in the inspection. The deadline to submit the CAP was April 2, 2017. On March 10, 2017, Respondent requested that the deadline to submit the CAP be extended. On March 15, 2017, the Department extended the deadline to submit the CAP until May 1, 2017.

24. On April 25, 2017, Respondent submitted a CAP to the Department, which addressed all the violations cited in the inspection and proposed a final compliance date of January 2019.

25. The Department reviewed the CAP for adequacy and sent a letter to Respondent on May 19, 2017, approving the proposed corrective actions and timeline in the CAP.

26. On January 4, 2018, the Department received a progress report from Civil Engineering Associates, LLC on behalf of Respondent. The report detailed the corrective actions taken to address the violations listed in Paragraph 16 above.

27. Respondent has hired a Class II Wastewater Operator.

### **ORDER AND AGREEMENT**

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall maintain compliance with all permitted effluent limits.
2. Within thirty (30) days of the effective date of this Order, the Respondent shall submit evidence that their operator is licensed as a Class II Wastewater Operator, at minimum, in the State of Arkansas and shall submit a copy of the operator's license to the Department.
3. Respondent shall, within thirty (30) calendar days of the effective date of this Order, submit to ADEQ, a copy of the Operations and Maintenance (O&M) Manual for the operator use of the Respondent's wastewater treatment system.
4. Respondent shall immediately comply with the April 25, 2017 CAP, and the milestone schedule and final compliance date contained in the CAP shall be fully enforceable as terms of this Order.
5. If unable to comply with the April 25, 2017 CAP, within thirty (30) calendar days of the effective date of this Order, Respondent shall submit to ADEQ, for review and approval, a revised CAP developed by a Professional Engineer licensed in the state of Arkansas. The CAP shall, at minimum, include a reasonable milestone schedule with a date of final compliance no later than July 31, 2019, and the CAP shall detail the methods and best available technologies that will be used to correct the violations listed in Findings of Fact 11(a), 11(b), 11(c), 11(d), and



11(e), and prevent future violations. Upon review and approval by ADEQ, Respondent shall comply with the terms, milestone schedule, and final compliance date contained in this Order and the approved CAP. The milestone schedule and final compliance date shall be fully enforceable as terms of this Order.

6. On or before the fifteenth 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 all Permit requirements. Respondent shall submit the final compliance report by July 31, 2019.

7. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Five Thousand One Hundred Fifty Dollars (\$5,150.00) of which Four Thousand One Hundred Fifty Dollars (\$4,150.00) shall be conditionally suspended by ADEQ. Payment of One Thousand Dollars (\$1,000.00) 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 Arkansas Department of Environmental Quality, and mailed to the attention of:

ADEQ, Fiscal Division  
5301 Northshore Drive  
North Little Rock, AR 72118

The suspension and dismissal of the civil penalties is contingent upon Respondent complying with the terms of this Order. If Respondent fully complies with this Order, the civil penalty of Four Thousand One Hundred Fifty Dollars (\$4,150.00) shall be DISMISSED by ADEQ. If Respondent violates any term of this Order, or fails to pay the reduced sum of One Thousand Dollars (\$1,000.00), the full balance of Five Thousand One Hundred Fifty Dollars (\$5,150.00) shall become immediately due and payable to ADEQ. In the event that Respondent fails to pay

the civil penalty within the prescribed time, ADEQ shall be entitled to attorneys' fees and costs of collection.

8. 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 which may be available to ADEQ by reason of failure by Respondent to comply with the requirements of this Order.

9. 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.

10. 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.

11. 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.

12. 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. ADEQ 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.

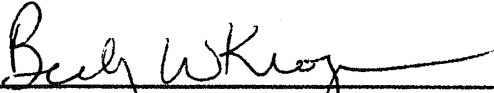
13. Nothing in this Order shall be construed as a waiver by ADEQ of its enforcement authority over alleged violations not specifically addressed herein. Also, this Order does not exonerate Respondent from any past, present, or future conduct which is not expressly addressed herein, nor does it relieve Respondent of its responsibilities for obtaining any necessary permits.

14. 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.

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

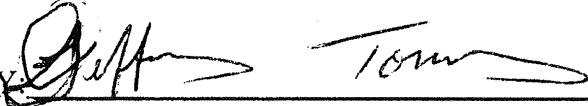
16. The City Council of Respondent has authorized the Mayor and City Clerk/Treasurer to expend funds for compliance activities required by this Order including but not limited to the payment of a civil penalty as set forth in this Order. See Exhibit A.

SO ORDERED THIS 31 DAY OF August, 2018.

  
\_\_\_\_\_  
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

City of Carthage

BY   
\_\_\_\_\_  
(Signature)

Jeffery Toney  
\_\_\_\_\_  
(Typed or printed name)

TITLE: MAYOR

DATE: 8-24-2018

**City of Carthage City Council Special Meeting**

**August 22, 2017**

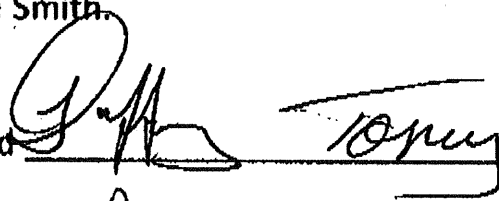
**Carthage City Council met in special at Carthage City Hall . Meeting was called to order at 7 p.m by Mayor Toney.**

**Roll was as follows Martha Lea, James Johnson, Bruce Smith, Helen Jacobs, absent Carolyn Collins.**

**Correspondence was received from ADEQ and was read concerning order and violations with the city sewer operations system. Penalty was levied against the city in the amount of \$4150.00; The ADEQ sent letter stating stipulations that would reduce the fine if paid by the due date to \$1000.00.**

**Motion by Martha Lea 2<sup>nd</sup> by Bruce Smith to agree for Water and Sewer to pay the \$1000.00 cap to stop all penalties. All agreed with no opposed.**

**Meeting adjourned at 7:30 p.m with motion by Martha Lea and 2<sup>nd</sup> Bruce Smith.**

Signed  (Mayor)

Signed  (Recorder)