

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Marvell
P.O. Box 837
Marvell, AR 72366

LIS No. ~~19~~ 20-002
Permit No. AR0035840
AFIN 54-00078

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 Marvell (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.

FINDINGS OF FACT

1. Respondent operates a municipal wastewater treatment plant (“Facility”) located at 100 Block of Remley Street, Marvell, Phillips County, Arkansas.
2. Respondent discharges treated wastewater to Big Creek, thence to the White River in Segment 4A of the White River Basin.
3. Respondent is regulated pursuant to the National Pollutant Discharge Elimination System (NPDES).

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.

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, regulation, 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 regulation 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. The Division issued NPDES Permit Number AR0035840 (“Permit”) to Respondent on January 15, 2015. The Permit became effective on February 1, 2015, and expires on January 31, 2020.

10. 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.

11. Respondent intends to operate this facility beyond the expiration date of the current permit, January 31, 2020.

12. On February 6, 2019, and May 3, 2019, Respondent was notified that the Permit would expire on January 31, 2020, and that in order to continue the regulated activity, a complete renewal application must be submitted no later than August 4, 2019.

13. To date, Respondent has not submitted a complete permit renewal application.

14. The complete Permit renewal application was not received by August 4, 2019. Failure to submit the Permit renewal application by August 4, 2019, 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).

15. The Division conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit. 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 July 1, 2016 through July 31, 2019:

- a. Five (5) violations for Carbonaceous Biochemical Oxygen Demand;
- b. Two (2) violations for Fecal Coliform; and
- c. Two (2) violations for Dissolved Oxygen.

16. Each of the nine (9) discharge limitation violations listed in Paragraph 15 above constitutes a separate Permit violation for a total of nine (9) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

17. The Division's review of the certified DMRs submitted by Respondent in accordance with the Permit also revealed that Respondent failed to submit Noncompliance Reports (NCR) for violations of the permitted effluent discharge limits as required by Part III, Section D, Condition 7 of the Permit. The following NCRs were not submitted:

- a. 2016: December;
- b. 2017: February and March;
- c. 2018: April and December; and
- d. 2019: February.

18. Each of the six (6) reporting violations listed in Paragraph 17 above constitutes a separate Permit violation for a total of six (6) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

19. The Division's review of the certified DMRs submitted by Respondent in accordance with the Permit further revealed that Respondent failed to submit DMRs in accordance with Part III, Section C, Condition 5 of the Permit. The following DMRs were not submitted timely:

- a. 2016: July, August, September, October, November, and December;
- b. 2017: January, February, March, April, May, June, August, October, November, and December;
- c. 2018: January, March, April, May, June, July, December; and
- d. 2019: January and February.

20. Each of the twenty-five (25) reporting violations listed in Paragraph 19 above constitutes a separate Permit violation for a total of twenty-five (25) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

21. On August 22, 2019, DEQ conducted a Compliance Evaluation Inspection and a Sanitary Sewer Overflow (SSO)/Collection System Inspection of the Facility. The inspection revealed the following violations:

- a. The following conditions were present that constitute improper operation and maintenance of the facility:

- i. The influent bar screen showed signs of corrosion and sediment accumulation;
- ii. The rotor aerator was inoperable;
- iii. There was excessive algae growth in Pond 1;
- iv. There was excessive vegetation along the outer levees;
- v. Burrowing animals were noted in the levees;
- vi. There was excessive woody vegetation on the levees dividing each pond;
- vii. The water level in Pond 3 exceeded the minimum freeboard of two (2) ft;
- viii. Disinfection had been discontinued without obtaining permission;
- ix. The chlorine building was in disrepair;
- x. There was no emergency contact information posted at the lift stations;
- xi. The control panels, latches, and wet well hatches were not secured to prevent unauthorized access;
- xii. There were no maintenance records or operator logs demonstrating lift station inspections;
- xiii. Pump #2 at the Midway Lift Station is in need of maintenance; and
- xiv. Sanitary waste was observed on the ground near the Burt Lift Station.

These conditions violate Part III, Section B.1.A of the Permit and are therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

- b. Records of monitoring information, specifically flow records, Chain of Custody, and lab analysis sheets were not retained by Respondent. This is a violation of Part III, Section C.7 of the Permit and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

c. The flow sheet maintained by Respondent did not include the exact place, time, and individual(s) who performed the sampling or measurements. This is a violation of Part III, Section C.8.A and B of the Permit and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

22. On September 9, 2019, DEQ notified Respondent of the findings of the August 22, 2019 inspection and requested a written response for each violation be submitted to DEQ on or before September 26, 2019.

23. On September 20, 2019, DEQ received a response from Respondent to the August 22, 2019 inspection. The response did not address each violation noted in the August 22, 2019 inspection.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. On or before the effective date of this Order, Respondent shall submit a complete Permit renewal application to the Division.
2. Respondent shall comply with the existing Permit until the effective date of the permit renewal.
3. Respondent shall submit DMRs in accordance with the Permit.
4. Respondent shall submit NCRs in accordance with the Permit.
5. Within thirty (30) calendar days of the effective date of this Order, Respondent shall submit to DEQ, for review and approval, a comprehensive CAP. The CAP shall include, at minimum the methods and best available technologies that will be used to correct the violations listed in Findings of Fact Paragraphs 15 and 21 and prevent future violations and include a reasonable milestone schedule with a date of final compliance no later than December 31, 2020. Upon review and approval by DEQ, Respondent shall comply with the terms, milestone

schedule, and final compliance date contained the approved CAP. The milestone schedule and final compliance date shall be fully enforceable as terms of this Order.

6. Within sixty (60) calendar days of the effective date of this Order, Respondent shall submit to DEQ an Operations and Maintenance Manual ("Manual") that describes, in detail, the operational and maintenance procedures, staffing, maintenance schedules, and reporting measures that will be undertaken to operate the facility in compliance with the Permit. Respondent shall implement and adhere to the standard operating procedures defined in the Manual immediately upon its submittal to DEQ.

7. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Four Thousand Three Hundred Fifty Dollars (\$4,350.00), or one-half of the full civil penalty of Two Thousand One Hundred Seventy-Five Dollars (\$2,175.00) if this Order is signed and returned to the Office of Water Quality Enforcement Branch, DEQ, 5301 Northshore Drive, North Little Rock, Arkansas, 72118-5317, within twenty (20) calendar days of receipt of this Order. Payment 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 Division of Environmental Quality, and mailed to the attention of:

Division of Environmental Quality
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.

8. 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 which may be available to DEQ 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 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.

10. DEQ may grant an extension of any provision of this Order, provided that Respondent requests such an extension in writing and provided that 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. The burden of proving that any delay is caused by circumstances beyond the control of and without the fault of Respondent and the length of the delay attributable to such circumstances shall rest with Respondent. Failure to notify the DEQ 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 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.

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. 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 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 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.

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 31st DAY OF December, 2019.

Becky W. Keogh
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

City of Marvell

BY: [Signature]
(Signature)

Lee Guest
(Typed or printed name)

TITLE: Mayor

DATE: 12-17-19

CITY COUNCIL MEETING MINUTES
DECEMBER 17, 2019 6:00 P.M.

CALL TO ORDER - MAYOR LEE GUEST

ROLL CALL - RECORDER/TREASURER ALETHA GIBBS
HINDSLEY, POWELL, WOOTEN, PETTIE ALL PRESENT.
ABSENT , DENSON AND MCCALL.

INVOCATION – CURTIS PETTIE

APPROVE MINUTES FOR NOVEMBER 19, 2019 CITY
COUNCIL MEETING. MOTION MADE BY HINDSLEY,
SECOND BY WOOTEN , ALL I'S

FIRE DEPARTMENT REPORT – MAYOR GUEST
REPORTED 2 MEETINGS

COURT REPORT – TOTAL FINES COLLECTED FOR THE
MONTH OF NOVEMBER \$8,483.95.

POLICE REPORT – TOTALS WRITTEN 36, 1 JAILED
INCIDENT/OFFENSE REPORTS : 10

STREET REPORT – MEN DIGGING DITCHES, CLEANING
AROUND THE CITY

WATER REPORT – MARVELL WATER SECRETARY
BARBIE WASHBURN PRESENTED TO THE COUNCIL
THE LETTER OF ORDER FROM ADEQ VIOLATION. THE
MARVELL WATER DEPARTMENT IS WORKING WITH
ARKANSAS RURAL WATER TO CORRECT THE ISSUES.
THE COUNCIL AGREED FOR MAYOR GUEST TO SIGN
THE ORDER.

CITY REPORT – MR BENNETT WILL DONATE THE DIXIE
BUILDING TO THE CITY. WE WILL PAY THE APPRAISAL
OF \$500.00 THE CHRISTIAN CHURCH DID NOT WANT TO
DONATE THEIR CHURCH

CITY BILLS – MOTION TO APPROVE MADE BY
HINDSLEY, SECOND BY PETTIE ALL I'S

ORDINANCE 2019-10 AMENDED, AN ORDINANCE TO
AMEND ORIDNANCE (2017-11) 4.04.02 AND 4.04.04 OF
THE CODE OF ORDINANCES IN THE CITY OF MARVELL.

MOTION TO APPROVE ORDINANCE NUMBER 2019-10
MADE BY HINDSLEY, SECOND BY MCCALL ALL I'S
SPLASH PAD WILL BE WORKING NEXT SPRING.

PETTIE MADE MOTION TO ADJOURN, HINDSLEY
SECOND ALL I'S