

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Bethel Heights  
530 Sunrise Drive  
Bethel Heights, AR 72764

LIS No. 15- 131  
Permit No. 4725-WR-4  
AFIN 04-00630

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (hereinafter "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 (hereinafter "APC&EC").

The issues herein having been settled by the agreement of the City of Bethel Heights (hereinafter "Respondent") and the Arkansas Department of Environmental Quality (hereinafter "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 wastewater treatment system and drip irrigation disposal system (hereinafter "facility") located at the Southeast corner of Apple Blossom Street and Lincoln Street in Bethel Heights, Benton County, Arkansas.
2. The facility is regulated under No-Discharge Permit 4725-WR-4 (hereinafter "Permit") issued to Respondent on October 31, 2009. The Permit became effective on November 1, 2009 and expired on October 31, 2014.

3. A complete renewal application was received on June 2, 2014.
4. The facility was assigned the renewal permit number 4725-WR-5.
5. The application was deemed administratively complete on June 20, 2014 and the facility is allowed to operate under the existing Permit, number 4725-WR-4, until the renewal Permit is issued.
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 [ADEQ].
7. Ark. Code Ann. § 8-4-103 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.
8. Pursuant to Ark. Code Ann. § 8-4-103(c)(1)(B), "Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment."
9. Ark. Code Ann. § 8-4-103(3)(A) permits the Director of ADEQ to authorize in-kind services or cash contributions as partial mitigation of cash penalties for use in projects or programs designed to advance environmental interests. These in-kind services or cash contributions are known as Supplemental Environmental Projects ("SEP's").
10. On December 9, 2014, the Department conducted a reconnaissance inspection of the facility in response to a complaint. The inspection revealed the following violations:

- a. A review of the monthly No-discharge monitoring reports (hereinafter "NMRs") for the period of January 1, 2012 through June 30, 2015 revealed one hundred forty-seven (147) violations of the permitted effluent limits detailed in Part I of the Permit. Respondent reported forty-seven (47) violations for Total Suspended Solids, thirty-six (36) violations for Fecal Coliform, and sixty-four (64) violations for Carbonaceous Biochemical Oxygen Demand. Each of the one hundred forty-seven (147) effluent limit violations listed above constitutes a separate Permit violation and therefore one hundred forty-seven (147) separate violations of Ark. Code Ann. § 8-4-217(a)(3).
- b. Effluent surfaced on the ground in phases one (1) through four (4) of the drip irrigation fields. This action violated Part II, Condition 1 of the Permit and therefore violated Ark. Code Ann. § 8-4-217(a)(3).

9. On January 2, 2015, the Department notified Respondent of the results of the inspection.

10. January 8, 2015, the Department received the Respondent's response to the violations cited in the inspection report. The response included a corrective action plan (hereinafter "CAP"). Respondent stated in the CAP that actions to correct effluent from surfacing would be completed by July 2015. The CAP did not include a plan for correcting effluent violations.

11. On January 26, 2015, the Department notified Respondent that the date of July 2015 to complete the actions needed to correct the effluent surfacing issues was acceptable and to submit a CAP for the effluent violations.

12. On February 27, 2015, Respondent submitted a CAP for the effluent violations. Respondent stated in the CAP that actions needed to comply with permitted effluent limits would be completed by July 2015.

13. On June 11, 2015, ADEQ proposed a draft Consent Administrative Order to Respondent to resolve the violations cited herein.

14. On July 6, 2015, Respondent submitted a response to the draft CAO with a proposed SEP. See Exhibit A attached and incorporated herein.

#### ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall complete all work necessary to cease all effluent from surfacing onto the ground and to comply with permitted effluent limits by the effective date of this Order.

2. Respondent shall submit written documentation to the Department certifying that all violations cited herein have been corrected and the facility is in compliance with the Permit by the effective date of this Order.

3. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a reduced civil penalty of FOUR THOUSAND ONE HUNDRED SIXTY DOLLARS (\$4,160.00) with the SEP referenced in Findings of Fact in Paragraph 14 above. A thirty-five percent (35%) reduction of the total amount of the penalty, which is ONE THOUSAND FOUR HUNDRED FIFTY-SIX DOLLARS (\$1,456.00), shall be allowed for use in the SEP. The SEP shall be for the purchase of materials related to the expansion of the Northwest Arkansas Children's Shelter's garden, which is used for the children's environmental education. The payment of the penalty and the cash contribution for use in the SEP is due within thirty (30) calendar

days of the effective date of this Order. Payment of the civil penalty shall be made payable to the Arkansas Department of Environmental Quality, and mailed to the attention of:

Arkansas Department 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, ADEQ shall be entitled to attorneys' fees and costs of collection.

4. Within sixty (60) days of the effective date of this Order, Respondent shall submit to ADEQ, a copy of the purchase receipt(s) of the educational materials for the SEP and a copy of a letter from the Northwest Arkansas Children's Shelter confirming that the materials were secured.

5. Should Respondent not complete the requirements of the SEP as provided for in Order and Agreement Paragraph 4 of this Order, the balance of the full civil penalty of SIX THOUSAND FOUR HUNDRED DOLLARS (\$6,400.00) shall be immediately due and payable to ADEQ.

6. 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.

7. If any event, including but not limited to an act of nature, occurs which 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.

8. ADEQ 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 ADEQ promptly, as provided in the preceding paragraph of this Section, shall be grounds for a denial of an extension.

9. 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 adequately respond to such Notice of Deficiency within the timeframe specified in writing by ADEQ constitutes a failure to meet the requirements established by this Order.

10. 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 10<sup>th</sup> or 25<sup>th</sup> 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.

11. 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.

12. 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 B.

13. The City Council of Respondent has authorized the Mayor and City

Clerk/Treasurer to sign this Order on behalf of Respondent. See Exhibit B.

14. 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 in the amount of FOUR THOUSAND ONE HUNDRED SIXTY DOLLARS (\$4,160.00) with the SEP. See Exhibit B.

SO ORDERED THIS 2nd DAY OF November, 2015.

Becky W Keogh  
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

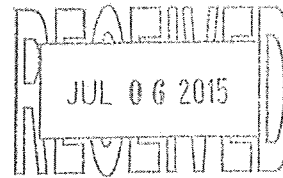
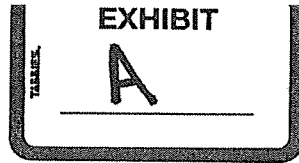
City of Bethel Heights

BY: Cynthia G Black, Janet Nelson  
(Signature)

Cynthia G. Black, Janet Nelson  
(Typed or printed name)

TITLE: Mayor, Recorder/Treasurer

DATE: October 6, 2015



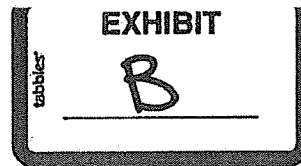
City of Bethel Heights  
Supplemental Environmental Project

Northwest Arkansas Children's Shelter located in Benton County is a shelter for children that the State has taken into custody. The Shelter houses 48 children whose age range from birth to 17 years. The Shelter has classes the children attend for their education without leaving the facility. The teachers started the project in class last year teaching the children about the environment and how growing their own food helps in that process. The Shelter fenced off an area of 900 square feet where they placed six (6) raised beds for growing vegetables. The garden is all organic. The children start in the classroom growing their plants from seed. They are then taught about the soil. They are taught composting is a good way to recycle your food scraps and how that helps the soil and environment. They have their own composting area that they use to put back in the soil for the planting and growing of the garden. The children water, weed and remove any bugs by hand each day. They have four classes divided by age and each class is involved daily in the project. The children are being taught where their food comes from, how it grows, and how it helps the environment. The food is raised and consumed by the students at the Shelter. The organic growing eliminates the chemicals that are harmful to the air, water and soil that absorbs the chemicals. The composting of their food scraps help enrich the soil and put back nutrients in the earth. The children are taught the full cycle of taking and giving back to the earth for a better environment through this project.

The Shelter wants to plant fruit trees for a mini orchard and add more raised beds for the children's education. Planting a mini orchard would add oxygen to the air and provide natural teaching tools for the children. Bethel Heights Wastewater Department would like to provide the funds necessary to purchase the Fruit Trees, vegetable seeds, plants, and materials needed for additional raised beds. We feel this is a great environmental project and request that you approve our penalty reduction request of thirty-five percent (35%) that we may be able to assist the Shelter in this endeavor.

Please find listed below the detailed items and dollar amounts for the Supplemental Environmental Project. The total cost of the 35% reduction would be \$1456.00.

Fruit Trees (6)	\$148.50
Wood (treated for 5 raised beds)	\$204.17
Screws for raised beds	\$ 33.00
Bagged Organic Compost (60)	\$229.02
Bagged Garden Soil (60)	\$526.02
Vegetable Seeds & Plants	\$145.12
Education Organic Garden Books	<u>\$170.17</u>
<b>Total Cost</b>	<b>\$1,456.00</b>



MINUTES  
CITY COUNCIL MEETING  
BETHEL HEIGHTS CITY HALL  
October 6, 2015 at 6:00 P.M.  
SPECIAL MEETING

The Bethel Heights City Council met in a special meeting in the Bethel Heights City Hall. Mayor Cynthia Black called the meeting to order at 6:05 p.m.

Call to Order

ROLL CALL: The following members answered the roll call: Karen Taylor, Sam Black, Matt Gerlt, Jim Swanson, and Herman Seiter.

Roll call

OFFICIALS IN ATTENDANCE: Recorder/Treasurer Janet Nelson, Deputy City Clerk Lisa Gibson, City Attorney Joe Summerford, and Police Chief Rick Moore were also present.

Officials

PLEDGE OF ALLEGIANCE: The members recited the Pledge of Allegiance.

Pledge

APPROVE AGENDA: Alderman Black moved to approve the agenda for October 6, 2015. Alderman Seiter seconded the motion. Motion passed without dissent.

Agenda  
Motion to Approve  
Motion Passed

NEW BUSINESS:

New Business  
ADEQ-Consent  
Order

1. **ADEQ-Consent Order:** Mayor Black stated that ADEQ has approved the request for the reduction of the penalty with the Children’s Shelter receiving the donation. Mayor Black stated that a public notice will be given for a 30 day period. Mayor Black stated that consent was needed for her and Janet to sign off on the order and that funds need to be appropriated for \$6,400 from wastewater funds. Alderwoman Taylor motion to sign the consent order and to appropriate \$6,400 from the wastewater fund. Alderman Gerlt seconded the motion. Mayor Black called the roll and the following votes were recorded: Taylor-yes, Black-yes, Gerlt-yes, Swanson-yes, and Seiter-yes. Motion passed without dissent.

Motion to Sign & Appropriate

2. **Fire Proposal:** Mayor Black stated that she met with Chief Morris and Mayor Long on October 1<sup>st</sup>. Mayor Black stated that currently our firemen are volunteers from Lowell and neighboring cities with two firefighters working at the station in Bethel Heights since the 1<sup>st</sup> of June. Mayor Black stated that Lowell has given the City of Bethel Heights two proposals that would be as follow: 1)Stay like we are but with a cost of \$82,000 plus ambulance cost or 2)Close the fire station at Bethel Heights, with us keeping our equipment, and paying the City of Lowell \$107,973 plus ambulance cost. Mayor Black stated that we would still carry insurance and maintenance to the building. Alderwoman Taylor asked how that affects homeowners. Mayor Black stated that she has spoken to ISO and she has been informed that the ISO rating would go back up for the both cities; however the city of Lowell disagrees. Alderman Gerlt stated that would affect homeowner’s insurance. Mayor Black stated that we have a contract with the City of Lowell

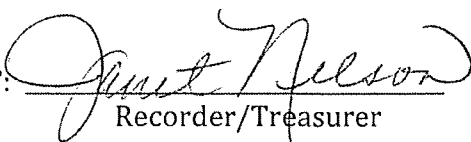
Motion Passed  
Fire Proposal

through January 31, 2019. Mayor Black asked for guidance from council members. Mayor Black stated that the numbers are being based on the Lowell Fire Department's budget which is 10%. Mayor Black informed members that she had ran the numbers and thought that \$50,000 was a good number for the cost of fire and ambulance service but that Chief Morris and Mayor Long disagreed. City Clerk Nelson stated that she didn't understand why there was a discussion if the cities had a contract through January 31, 2019. Alderwoman Taylor asked if we had to do something because of ambulance service. Mayor Black stated yes and that she had been informed by the City of Springdale that if ambulance service was needed for a few months in 2016 that they would help but that they wouldn't be able to continue servicing Bethel Heights for all of 2016. Mayor Black stated the pricing that Lowell has given for ambulance service is a good price. Alderwoman Taylor asked what the options were. Alderman Gerlt stated that he thinks we should stay with the current contact with the City of Lowell that is good through January 31, 2019 plus the ambulance cost. Mayor Black stated that the City of Lowell doesn't think the contact is any good and that the cost of fire coverage is being based on each year's budget not any actual cost. City Clerk Nelson stated that tax dollars were used to pay for Bethel Heights to build our fire station and that it would be a waste to no longer have a fire department. Mayor Black stated that it is her opinion that when Lowell builds their second station in Lowell, they won't need us any longer; however they are saying that they don't need us now. Alderman Gerlt asked what the cost would be to have our own fire department. Mayor Black stated it would be around \$250,000 in just salaries for 6 men and a Chief. Alderman Swanson commented that we need more revenue for the city. Mayor Black stated that she could speak with Lowell regarding the contract that Lowell states isn't any good. Alderman Seiter stated that the city can't afford to have their own fire department. Alderwoman Taylor asked that Mayor Black speak with Lowell again and push the contract issue. Mayor Black asked if all council members were good with the ambulance portion. Members stated yes. Alderman Swanson stated that he would like to be present at the meeting with Lowell.

ADJOURN MEETING: Alderwoman Taylor moved to adjourn the meeting. Alderman Gerlt seconded the motion. Motion passed without dissent. Meeting adjourned at 6:37 p.m.

**Adjourn Meeting**  
**Motion to Adjourn**  
**Motion Passed**

APPROVED:   
Mayor

ATTEST:   
Recorder/Treasurer