

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Keo
P.O. Box 35
Keo, AR 72083

LIS No. 20- 116
Permit No. AR0037613
AFIN 43-00060

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 Keo (Respondent) and the Division of Environmental Quality¹ (DEQ), 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 Pecan Road, in Keo, Lonoke County, Arkansas.
2. Respondent discharges treated wastewater to an unnamed tributary of North Bayou, thence to North Bayou, thence to Plum Bayou, thence to the Arkansas River in Segment 3C of the Arkansas 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 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 rule 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. DEQ issued NPDES Permit Number AR0037613 (“Permit”) to Respondent on January 22, 2015. The Permit became effective on February 1, 2015, and expires on January 31, 2020.

Failure To Submit A Timely Complete Permit Renewal Application

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. On July 1, 2019, DEQ received an incomplete permit renewal application from Respondent, and on July 9, 2019, DEQ notified Respondent that the permit renewal application was incomplete.

14. On August 5, 2019, Respondent submitted additional information.

15. On August 8, 2019, DEQ notified Respondent via email that the permit renewal application was incomplete and provided a list of deficiencies for the permit renewal application.

16. On November 7, 2019, Respondent submitted additional information.

17. On November 14, 2019, DEQ notified Respondent via certified mail that the Permit renewal application was reviewed and determined to be administratively complete on November 7, 2019.

18. 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 is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

Compliance Evaluation Inspection

19. On July 29, 2019, DEQ performed a Compliance Evaluation Inspection of the Facility and the following violations were found:

- a) Excess vegetation, including woody vegetation, was growing on the levees of both lagoons. This is a violation of Part III, Section B, Condition 1.A. of the Permit and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).
- b) Effluent was leaking under the V-notch weir at Outfall 001. This is a violation of Part III, Section C, Condition 2 of the Permit and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).
- c) No records of any monitoring were kept at the Facility. This is a violation of Part III, Section C, Conditions 7 and 8 of the Permit and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

20. On August 27, 2019, DEQ notified Respondent via mail of the Inspection Report and requested Respondent submit a written response to each violation noted in the inspection report to DEQ on or before September 12, 2019.

21. On September 27, 2019, DEQ notified Respondent via certified mail of the Inspection Report and requested Respondent submit a written response to each violation noted in the inspection report to DEQ on or before October 3, 2019.

22. On October 28, 2019, Respondent and DEQ met at DEQ headquarters to discuss the violations found during the July 29, 2019 inspection and the missing permit renewal application information.

23. To date, Respondent has not submitted a response to the violations observed during the July 29, 2019 inspection.

Discharge Monitoring Report Review

24. On October 4, 2019, DEQ conducted a review of the certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit. The review revealed

that Respondent reported the No Data Indicator (NODI) Code C for No Discharge on the 001-A and 001-F DMRs with a monitoring period end date of July 31, 2019. The review also revealed that the last time a discharge was reported from Respondent was the monitoring period ending April 30, 2010.

25. DEQ observed effluent flowing under the V-notch weir during the July 29, 2019 inspection, Respondent did not report the discharge on the 001-A and 001-F DMRs with a monitoring period end date of July 31, 2019. Failure to report and monitor a discharge is a violation of Part I, Section A of the Permit and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall comply with the existing Permit until the effective date of the Permit renewal.
2. On or before the effective date of the Order, Respondent shall remove the woody vegetation and saplings growing on the levees of the lagoons and submit photographic documentation to DEQ demonstrating removal.
3. Within thirty (30) calendar days of the effective date of the Order, Respondent shall adjust the V-notch weir so that the effluent flows through it properly. Respondent shall also submit a certification from a Professional Engineer (P.E.) licensed in the state of Arkansas that the V-notch weir is installed correctly and operating according to manufacturer's design in accordance with Part III, Section C, Condition 2 of the Permit.
4. Upon the effective date of this Order, Respondent shall submit to DEQ monthly flow monitoring records showing the flow has been monitored in accordance with Part I, Section A of the Permit. The monthly flow monitoring records shall be submitted to DEQ with the DMR for

the corresponding month, and submission of the monthly flow monitoring records shall continue for one (1) year from the effective date of this Order.

5. Respondent shall sample the effluent according to Part I, Section A of the Permit.

6. Respondent shall report the results of the sampled effluent in accordance with Part III, Section C, Condition 5 of the Permit.

7. On or before the effective date of the Order, Respondent shall correct the 001-A and the 001-F DMRs with a monitoring period end date of July 31, 2019, to report NODI E, Analysis Not Conducted.

8. Respondent shall retain all records in accordance with Part III, Section C, Conditions 7 and 8 of the Permit.

9. Upon the effective date of this Order, Respondent shall submit to DEQ a quarterly report with the records specified in Part III, Section C, Condition 8 of the Permit, and submission of the quarterly reports shall continue for one (1) year from the effective date of this Order.

10. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Four Thousand Two Hundred Dollars (\$4200.00) of which Three Thousand Seven Hundred Dollars (\$3700.00) shall be conditionally SUSPENDED by DEQ. 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

The suspension and dismissal of civil penalties is contingent upon Respondent complying with the terms of this Order. If Respondent fully complies with this Order, the SUSPENDED civil

penalty of Three Thousand Seven Hundred Dollars (\$3700.00) shall be DISMISSED by DEQ. If Respondent violates any term of this Order, or fails to pay the reduced sum of Five Hundred Dollars (\$500.00), the full balance of Four Thousand Two Hundred Dollars (\$4200.00) 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.

11. 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 that may be available to DEQ by reason of failure by Respondent to comply with the requirements of this Order.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

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

19. 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 10th DAY OF February, 2020.

Becky W. Keogh
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

City of Keo

BY: Mayor James Pearson
(Signature)

MAYOR JAMES PEARSON
(Typed or printed name)

TITLE: Mayor

DATE: 1-20-2020

City of Keo, Arkansas

Resolution No 2020-1

BE IT RESOLVED BY THE CITY OF COUNCIL OF KEO, ARKANSAS:

Whereas, the city of Keo, Arkansas desires to:

The City of Keo Approves
to proposed consent Administrative
Order to apply for a discharge
to correct the findings from
ADQA and pay reduced fee of \$500

NOW, THEREFORE, be it resolved that the City of Keo, by and through its Mayor and City Clerk to Present the Budget Adoption for the City of Keo 2019.

Dated this 20th day of January, 2019.

Mayor James Pearson
Mayor

Christa J. Hughes
City Clerk

Keo City Council Meeting

January 20, 2020

There was not a quorum for the December 16th meeting.

Mayor Pearson called the January 20, 2020 city council meeting to order at 7:03 PM those present were Mayor James Pearson, Recorder/treasure Clara Hughes, and Alderman Chris Collins, Ty Johnson, Stephanie White and Jerry Morton. There were 3 guests present for meeting.

Mayor Pearson welcomed everyone to the January council meeting and asked Mike Grist to speak to the council and give an update on Tony Ingle's the city's water & sewer worker's health condition. He stated that Tony was now in hospice and it was a matter of time before he passes. Mayor thanked Mike for coming in and giving an update on Tony.

Recorder/Treasure Clara Hughes read the minutes from the November 18, 2019 meeting after reading these minutes Collins made a motion to accept the minutes with a 2nd Morton with all in agreement and the motion passed unanimously.

The council looked over the 2020 budget for the New Year, after looking over the budget Collins made a motion to accept the budget as it was presented with a 2nd by Johnson and the motion passed unanimously.

Financial Statements for the City of Keo for November & December 2019 was reviewed by the city council. Morton made a motion to accept these financials with a 2nd by Collins and the motion passed with all in agreement.

Financial Statements for the City of Keo Water & Sewer for November & December 2019 was reviewed by the council after looking these over Johnson made a motion to accept these financials as presented with a 2nd by White with all in favor.

Mayor Pearson discussed the need to raise the rates for mosquito control and the council decided to table this issue until next month.

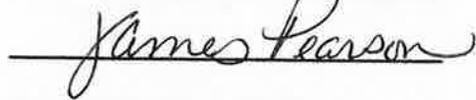
Fire Chief Charles Martin gave his monthly report to the council and reported 2 runs. He also informed the council that truck 1 was in need of an AED for emergencies the council then discussed the importance of this equipment and a motion was made by Jerry Morton to allow the purchase in the amount of \$1500 with a 2nd by Stephanie White with all in agreement with one abstention.

Mayor Pearson brought to the council the issues that the city was having concerning our sewer system. He informed the council that all the problems that were written concerning the city's sewer system items had been corrected and by doing so the city could reduce the \$ 4700.00 fine to \$500 dollars. After a discussion on this issue , Mayor Pearson then read resolution 2020-1 stating that the city of Keo approves to the proposed consent administrative order to apply for a discharge to correct the findings

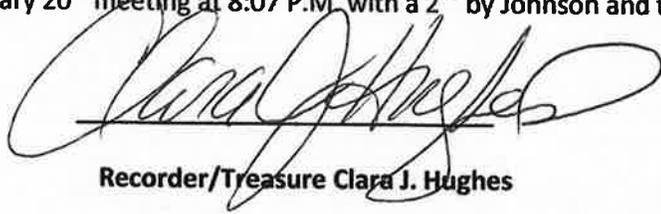
from ADEQ and pay the reduce fine of \$500. After the mayor read this resolution Stephanie White made a motion to accept the Resolution 2020-1 with a 2nd by Morton with all in agreement.

Mayor Pearson informed the council that he is the elections sheriff and needs volunteers to help with the March 3rd election from 7 A.M. to 7 P.M.

Collins made a motion to adjourn the January 20th meeting at 8:07 P.M. with a 2nd by Johnson and the motion passed with all in agreement.



Mayor James E. Pearson



Recorder/Treasure Clara J. Hughes

January 20, 2020