

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Wheatley  
P.O. Box 179  
Wheatley, AR 72392

LIS No. 19- 057  
Permit No. AR0036315  
AFIN 62-00069

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 Wheatley ("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 wastewater treatment facility ("Facility") located at the northwest end of Dennis Street, St. Francis County, Arkansas.
2. Respondent discharges treated wastewater to Big Creek, a.k.a. Flat Fork 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).

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. 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.

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(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.

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 Department issued NPDES Permit Number AR0036315 (“Permit”) to Respondent on October 29, 2013. The Permit became effective on November 1, 2013, and expired on October 31, 2018.

### Permit Renewal

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, October 31, 2018.
12. On November 1, 2017 and February 8, 2018, Respondent was notified that the Permit would expire on October 31, 2018, and that in order to continue the regulated activity, a complete renewal application must be submitted no later than May 4, 2018.
13. The Department received an incomplete application for renewal from Respondent on April 25, 2018, and the Department notified Respondent that the application was incomplete on May 8, 2018.
14. Respondent submitted additional information on May 15, 2018, and the Department notified Respondent that its application for renewal was administratively complete on May 17, 2018.
15. The complete Permit renewal application was not received by May 4, 2018. Failure to submit the Permit renewal application by May 4, 2018, 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).
16. The Department issued the Permit renewal to Respondent on February 28, 2019. The Permit became effective on March 1, 2019, and expires on February 29, 2024.

### DMR Late Submittal

17. The following DMRs were submitted after the 25th day of the month following the completed reporting period and therefore were not submitted in accordance with Part III, Section

C, Condition 5 of the Permit, which states “monitoring results obtained during the previous monitoring period shall be summarized and reported on a DMR dated and submitted no later than the 25th day of the month, following the completed reporting period”:

- a. January 2016;
- b. June 2016;
- c. July 2016;
- d. August 2016;
- e. November 2016;
- f. December 2016;
- g. January 2017;
- h. February 2017;
- i. March 2017;
- j. April 2017;
- k. May 2017;
- l. June 2017;
- m. August 2017;
- n. October 2017;
- o. November 2017;
- p. December 2017;
- q. January 2018;
- r. February 2018;
- s. March 2018;
- t. April 2018;

- u. May 2018;
- v. July 2018;
- w. August 2018;
- x. September 2018;
- y. October 2018; and
- z. November 2018.

18. Failure to submit DMRs by the 25th day of the month following the completed reporting period is a violation of Part III, Section C, Condition 5 and 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 Part III, Section C, Condition 5 of the Permit.
2. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Two Thousand Dollars (\$2,000.00), or one-half of the full civil penalty of One Thousand Dollars (\$1,000.00) if this Order is signed and returned to the Office of Water Quality Enforcement Branch, ADEQ, 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 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.

3. 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, the 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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 that is not expressly addressed herein, nor does it relieve Respondent of its responsibilities for obtaining any necessary permits.

9. 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.

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

11. 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 11 DAY OF June, 2019.

Becky W. Keogh  
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

City of Wheatley

BY: [Signature]  
(Signature)

LARRY NASH  
(Typed or printed name)

TITLE: MAYOR

DATE: 6/5/19




**RESOLUTION NO: 19-R-03**

**RESOLUTION ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY THAT APPROVES THE CONSENT ADMINISTRATIVE ORDER AND AUTHORIZES LARRY NASH, MAYOR AND JUDY BAYNES RECORDER/TREASURER TO SIGN CONSENT ADMINISTRATIVE ORDER ON BEHALF OF THE CITY OF WHEATLEY**

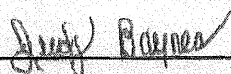
**WHEREAS:** The City approves and authorizes Larry Nash, Mayor and Judy Baynes, Recorder/Treasurer sign the Consent Administrative Order on behalf of the City of Wheatley For the Department of Environmental Quality

**IN WITNESS WHERE OF,** the City Council of City of Wheatley has duly adopted this resolution on June 4, 2019.

By:   
Larry Nash, Mayor

Title: Mayor

Attest:



Title: Recorder/Treasurer