

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Concord Water and Sewer Public Facilities  
Board of Crawford County, AR  
P.O. Box 622  
Van Buren, AR 72956

LIS No. 18- 095  
Permit No. AR0050938  
AFIN 17-00070

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 Concord Water and Sewer Public Facilities Board of Crawford County, AR ("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 618 Johns Road, Van Buren, Crawford County, Arkansas.
2. Respondent discharges treated wastewater to an unnamed tributary of Flat Rock Creek, thence to Flat Rock Creek, thence to Hollis Lake, thence to Flat Rock Creek, thence to the Arkansas River in Segment 3H of the Arkansas 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. NPDES Permit Number AR0050938 (“Permit”) was issued to Respondent on December 30, 2013, with an effective date of January 1, 2014, and an expiration date of December 31, 2018. A Permit modification was issued to Respondent on February 1, 2014, with an effective date of January 1, 2014, and an expiration date of December 31, 2018.

10. State Construction Permit Number AR0050938C (“Construction Permit”) was issued to Respondent on February 27, 2017, with an effective date of March 3, 2017.

11. On March 8, 2018, the Department conducted a Compliance Evaluation Inspection and a State WWTP Construction Inspection of the facility. The inspection revealed the following violations:

- a. Solids from the facility were observed in the receiving stream downstream of the permitted Outfall. This condition violated Part 1 Section A of the Permit and therefore violated Ark. Code Ann. § 8-4-217(a)(3).
- b. A Sanitary Sewer Overflow (SSO) occurred from the Hilltop Lift Station. SSOs are a violation of Part II Condition 5 of the Permit and are therefore a violation of Ark. Code Ann. § 8-4-217(a)(2).
  - i. Respondent failed to report, orally or by email, the SSO to ADEQ within twenty-four (24) hours of Respondent becoming aware of the overflow. Failure to report a SSO is a violation of Part II Condition 5.B of the Permit and therefore a violation of Ark. Code Ann. § 8-4-217(a)(2).
  - ii. Respondent failed to submit a written report of the SSO to ADEQ within five (5) days of the time Respondent became aware of the SSO. Failure to provide a written report of a SSO is a violation of Part II Condition 5.C of the Permit and therefore a violation of Ark. Code Ann. § 8-4-217(a)(2).
  - iii. Respondent failed to report the SSO on the monthly Discharge Monitoring Report (DMR). Failure to report the SSO on the DMR is a violation of Part II Condition 5.D of the Permit and therefore a violation of Ark. Code Ann. § 8-4-217(a)(2).

- c. Solids from the treatment system were observed on the ground at the dumpster and the chlorine contact chamber. This condition violated Part II Condition 6 of the Permit and therefore violated Ark. Code Ann. § 8-4-217(a)(3).
- d. The following conditions violated Part III Section B Condition 1.A of the Permit and therefore violated Ark. Code Ann. § 8-4-217(a)(3):
  - i. no disinfection was occurring as the chlorine cylinder was empty; and
  - ii. leaks were observed from fractures in the wall of the oxidation ditch.
- e. The effluent loading values submitted on the DMRs are not being calculated based on the instantaneous flow at the time the grab sample is collected. Part IV Condition 16 of the Permit, as referenced by Part I Section A, requires a grab sample to be collected in conjunction with an instantaneous flow measurement. This is a violation of Part I Section A of the Permit and therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).
- f. There is no documentation to show that the pH and Dissolved Oxygen (DO) meters used by Respondent are being calibrated prior to sample analysis. This is a violation of Part III Section C Condition 3 of the Permit and therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).
- g. Respondent is not analyzing and recording duplicate samples for pH and DO. This is a violation of Part III Section C Condition 3 of the Permit and therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).
- h. The effluent flow meter has not been calibrated within the last year by a qualified source to ensure accuracy within a deviation of  $\pm 10\%$ . This is a violation of Part

III Section C Condition 2 of the Permit and therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

- i. Written certification from a Professional Engineer stating that the facility was constructed or modified according to the approved plans has not been received by ADEQ. The operator stated that the modifications to the facility were completed over one (1) year ago. This is a violation of Condition 3 of the Construction Permit and therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

12. On April 26, 2018, the Department notified Respondent of the inspection results and requested Respondent to submit a written response to each violation to the Department by May 10, 2018. Respondent did not submit a response to the inspection report by the stated deadline.

13. On May 22, 2018, the Department 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 May 1, 2015 through May 22, 2018:

- a. Forty-nine (49) violations for Carbonaceous Biochemical Oxygen Demand;
- b. Twelve (12) violations for Ammonia Nitrogen;
- c. One (1) violation for DO; and
- d. Thirty-two (32) violations for Total Suspended Solids.

14. Each of the ninety-four (94) effluent discharge limitation violations listed in Paragraph 13 above constitutes a separate permit violation for a total of ninety-four (94) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

15. On June 15, 2018, the Department again notified Respondent that a written response to the violations cited in the March 8, 2018 Inspection Report was required and that the written

response was due to the Department by June 29, 2018. Respondent has not submitted a written response to the Department.

16. On August 29, 2018, Respondent submitted a written response to the violations cited in the March 8, 2018 Inspection Report and provided documentation of the attempted submission of the written response to the violations cited in the March 8, 2018 Inspection Report via email on May 9, 2018 and again on May 25, 2018.

### ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Upon the effective date of this Order, CAO LIS 11-231 shall be closed.
2. Respondent shall, within thirty (30) calendar days of the effective date of this Order, submit to ADEQ a written certification from a Professional Engineer licensed in the state of Arkansas that the facility was constructed or modified according to the approved plans and specifications.
3. Respondent shall, within thirty (30) calendar days of the effective date of this Order, submit to ADEQ corrected DMRs with the correct effluent loading values.
4. Respondent shall, within thirty (30) calendar days of the effective date of this Order, submit to ADEQ documentation that the flow meter has been calibrated by a qualified source to ensure accuracy within a deviation of  $\pm 10\%$ .
5. Respondent shall, within thirty (30) calendar days of the effective date of this Order, submit to ADEQ a Sanitary Sewer Overflow (SSO) Action Plan detailing the Standard Operating Procedures (SOPs) for identifying, quantifying, documenting, addressing and reporting SSOs.

6. Respondent shall, within (sixty(60) 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.
7. Respondent shall submit an interim operating plan within sixty (60) days of the effective date of this Order that describes, in detail, the operational measures that will be undertaken to consistently maximize the removal efficiency of all pollutants covered by this permit. Respondent shall implement the interim operating plan immediately upon its submittal to ADEQ.
8. The Respondent shall submit, within ninety (90) days of the effective date of this Order, a revised comprehensive Corrective Action Plan (CAP) prepared by a Professional Engineer licensed in the state of Arkansas that details the activities and milestones, including capital improvements, necessary to correct the violations listed in Paragraphs 11 and 13 and prevent future violations no later than December 31, 2019.
9. Upon review and approval of the CAP by ADEQ, Respondent shall implement and comply with the terms, milestone schedule, and final compliance date. The approved CAP shall be fully enforceable as the terms of this Order.
10. On or before the fifteenth (15th) 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 final permitted effluent limits. Respondent shall submit the final compliance report by December 31, 2019.
11. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Ten Thousand Five Hundred Fifty Dollars (\$10,550.00) of which Five Thousand Two Hundred Seventy-Five Dollars (\$5,275.00) shall be

conditionally suspended by ADEQ. Payment of Five Thousand Two Hundred Seventy-Five Dollars (\$5,275.00) 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 suspended civil penalty of Five Thousand Two Hundred Seventy-Five Dollars (\$5,275.00) shall be DISMISSED by ADEQ. If Respondent violates any term of this Order, or fails to pay the reduced sum of Five Thousand Two Hundred Seventy-Five Dollars (\$5,275.00), the full balance of Ten Thousand Five Hundred Fifty Dollars (\$10,550.00) 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.

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



13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. By virtue of the signature appearing below, the individual represents that he or she is an Officer of Respondent, being duly authorized to execute and bind Respondent to the terms contained herein. Execution of this Order by an individual other than an Officer of Respondent shall be accompanied by a resolution granting signature authority to said individual as duly ratified by the governing body of the entity.

SO ORDERED THIS 3rd DAY OF December, 2018.

Becky W Keogh  
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

Concord Water and Sewer Public Facilities  
Board of Crawford County, AR

BY: [Signature]  
(Signature)

John Spence  
(Typed or printed name)

TITLE: Chairman of the Board

DATE: 11-7-18