

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Perla
22675 Highway 67
Malvern, AR 72104

LIS No. 20- 185
Permit No.: Unpermitted
AFIN 30-00667

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 Perla (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 Sewer Collection System (SCS) located in the City of Perla, Hot Spring County, Arkansas.
2. Ark. Code Ann. § 8-4-217(a)(1) and (3) provide:
 - (a) It shall be unlawful for any person to:
 - (1) Cause pollution, as defined in § 8-4-102, of any of the waters of this state;

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.

...

(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].

3. Ark. Code Ann. § 8-4-217(b)(1)(E) provides:

(b)(1) It shall be unlawful for any person to engage in any of the following acts without having first obtained a written permit from the division:

(E) To discharge sewage, industrial waste, or other wastes into any of the waters of this state.

4. 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.

5. 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.”

May 23, 2020 Inspection

6. On May 22, 2019, DEQ received an anonymous complaint that raw sewage was being discharged onto the open ground from the collection system. Complainant noted that the discharge has been occurring for more than six (6) months at four (4) locations.

7. On May 23, 2019, DEQ conducted a complaint investigation in response to the complaint received on May 22, 2019. The inspection revealed the following:

- a. Lift Station 16, located at 120 Dempsey Lane, Perla, AR was overflowing;
- b. Lift Station 17, located at 218 Dempsey Lane, Perla, AR appeared to be disconnected and not in operation;

- c. Lift Station 15, located at 2576 Mount Willow, Perla, AR had previously overflowed; and
- d. Lift Station 9, located at 846 Griffin Cutoff, Perla, AR was overflowing.

Flow patterns indicate that the discharge from the lift stations flows to waters of this state. Respondent is not permitted to discharge untreated wastewater from its collection system. These unpermitted discharges violated Ark. Code Ann. §§ 8-4-214(a)(1) and 8-4-217(b)(1)(E) and therefore violated Ark. Code Ann. § 8-4-217(a)(3).

8. On June 10, 2019, DEQ notified Respondent via letter of the May 23, 2020 inspection results and requested a written response for each violation cited be submitted to DEQ by June 25, 2019.

9. On July 1, 2019, DEQ received Respondent's response to the inspection report stating that Respondent was in the process of replacing pumps for Lift Stations 8, 9, 15, and 16.

10. On July 9, 2019, DEQ notified Respondent via letter that the inspection response received on July 1, 2019, does not sufficiently address the violations cited in the June 10, 2019 inspection report. DEQ requested a timeline for the completion of the required work to replace the pumps and documentation that the work has been completed. The response was due to DEQ by July 23, 2019.

11. Respondent did not respond to DEQ's request dated July 9, 2019.

June 3, 2020 Inspection

12. On June 3, 2020, DEQ conducted a complaint investigation in response to the complaint received on May 30, 2020. The inspection revealed the following:

- a. Lift Station located on Perla Road, Perla, AR was overflowing and flowing to an unnamed tributary to Town Creek;

- b. Lift Station 9, located at 756 Griffin Cutoff, Perla, AR was overflowing;
- c. The lift stations inspected during the May 23, 2019 inspection were overflowing.

Respondent is not permitted to discharge untreated wastewater from its collection system. These unpermitted discharges violated Ark. Code Ann. §§ 8-4-217(a)(1) and 8-4-217(b)(1)(E) and therefore violated Ark. Code Ann. § 8-4-217(a)(3).

13. On June 19, 2020, DEQ notified Respondent via certified letter of the June 3, 2020 inspection results and requested a written response for each violation cited be submitted to DEQ within fourteen (14) calendar days of receipt of the letter.

14. On July 1, 2020, Respondent submitted a response to the June 3, 2020 inspection stating that one new pump was installed on June 4, 2020, and that Respondent is ordering a new pump for Lift Station 9 at 756 Griffin Cutoff. Respondent also stated that the ground at each pump station will be scraped and lime spread over the area.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall immediately implement Best Management Practices (BMPs) and correct the items referenced in the Findings of Fact Paragraphs 7 and 12. Within thirty (30) calendar days of the effective date of this Order, Respondent shall submit to DEQ a comprehensive CAP developed by a Professional Engineer licensed in the state of Arkansas. 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 Paragraph 7 and 12, prevent future violations, and include a reasonable milestone schedule with a date of final compliance. 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.

2. 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.

3. Respondent shall use tracking number ARU500211 to report future Sanitary Sewer Overflows via DEQ's online database.

4. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Three Thousand Six Hundred Dollars (\$3600.00), or one-half of the full civil penalty of One Thousand Eight Hundred Dollars (\$1800.00) 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 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:

DEQ, 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.

5. 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.

6. 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.

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

8. 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 a Notice of Deficiency within the timeframe specified in writing by DEQ constitutes a failure to meet the requirements established by this Order.

9. This Order is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d) and APC&EC Rule 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 Rule 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.

10. 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.

11. 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.

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

13. 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 15 DAY OF September, 2020.
with November

Becky W Keogh
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

City of Perla

BY: Raymond Adams
(Signature)

Raymond Adams
(Typed or printed name)

TITLE: Mayor

DATE: 9/15/20

CITY OF PERLA, AR
RESOLUTION #2020-002

A RESOLUTION TO APPROVE THE PROPOSED CONSENT ADMINISTRATIVE ORDER by ARKANSAS ENERGY & ENVIRONMENT and AUTHORIZING THE MAYOR & CLERK/TREASURER TO EXPEND THE FUNDS FOR COMPLIANCE ACTIVITIES REQUIRED BY THE ORDER: INCLUDING BUT NOT LIMITED TO: THE PAYMENT OF A CIVIL PENALTY AS SET FORTH IN THE ORDER.

RE: NPDES Permit Number UNPERMITTED, AFIN 30-00667

WHEREAS: Arkansas Energy & Environment has prepared a Proposed Consent Administrative Order imposing a penalty in the amount of \$3600.00 for violations of the Arkansas Water and Air Pollution Control Act, Ark. Code Ann 8-4-201 *et seq.*, at a site located in Perla, Arkansas.

WHEREAS: The Division of Environmental Quality (DEQ) has determined this CAO is necessary to ensure compliance with the Act.

The Perla City Council, by this Resolution, approves the CAO Amendment, and authorizes the Mayor: Raymond Adams and the City Clerk/Treasurer: Johnnie M Willis, to sign the CAO Amendment and to expend the funds for compliance activities required by this order.

Dated this 14th day of September 2020.

Mayor: Raymond Adams:



Date 9-15-20

Attest: Johnnie M Willis:



Date 9/15/20

Perla City Clerk/Treasurer