

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Mitchellville  
216 Emily Bowens Drive  
Mitchellville, AR 71639

LIS No. 17- *115*  
Permit No. AR0037125  
AFIN 21-00046

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 Mitchellville ("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 one (1) mile north of the Mitchellville city limits on the east side of U.S. Highway 65 in Desha County, Arkansas.
2. Respondent discharges treated wastewater to an unnamed tributary, thence to Canal No. 19, thence to the Boeuf River Diversion Canal No. 1, thence to Boeuf River, thence to the Ouachita River in Segment 2A of the Ouachita 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 AR0037125 (“Permit”) was issued to the Respondent on September 28, 2011, with an effective date of October 1, 2011, and an expiration date of September 30, 2016. The renewal Permit became effective on October 1, 2016, and expires on September 30, 2021.

10. On December 12, 2014, the Department sent a letter to Respondent requesting a Corrective Action Plan (CAP) to address the effluent discharge limit violations reported on the certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.
11. On December 19, 2014, the Department received a CAP from Respondent. The CAP did not contain a date of expected compliance as requested by ADEQ in the letter dated December 12, 2014.
12. On January 26, 2015, the Department received a letter from Respondent stating that the repairs listed in the CAP dated December 19, 2014, were complete.
13. On March 10, 2016, the Department sent a letter to Respondent requesting a CAP to address the effluent discharge limit violations reported on the certified DMRs submitted by Respondent in accordance with the Permit.
14. On March 21, 2016, the Department received a letter from Respondent addressing the Permit violations.
15. On April 26, 2016, the Department met with Respondent regarding their continuing effluent discharge limit violations. The Department and Respondent discussed the possibility of connecting Mitchellville to the Dumas wastewater treatment facility.
16. On February 15, 2017, the Department conducted a routine compliance evaluation inspection of the facility and a sanitary sewer overflow/collection system inspection. There were no violations noted at the time of inspection.
17. On February 17, 2017, the Department notified Respondent of the inspection results.
18. On June 5, 2017, the Department received a copy of Respondent's Wastewater Pre-Application to the Arkansas Natural Resource Commission Water/Wastewater Advisory

Committee. Respondent proposes to replace approximately 7,919 linear feet of sewer lines underneath the streets of the town due to deterioration.

19. On September 21, 2017, the Department conducted a review of the certified DMRs submitted by Respondent in accordance with the Permit and the renewal Permit.

20. The review revealed that from August 31, 2014, to August 31, 2017, Respondent reported the following violations of the permitted effluent discharge limits detailed in Part I, Section A of the Permit and the renewal Permit and therefore Ark. Code Ann. § 8-4-217(a)(3):

- a. Twenty-seven (27) violations for Total Suspended Solids;
- b. Four (4) violations for Ammonia Nitrogen; and
- c. Two (2) violations for Carbonaceous BOD.

21. Each of the thirty-three (33) effluent discharge limitation violations listed in Paragraph 20 above constitutes a separate permit violation for a total of thirty-three (33) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

22. On July 24, 2017, the Department requested from Respondent a revised CAP detailing the corrective actions that will be taken to achieve compliance with the terms of the renewal Permit and whether the proposed sewer line improvements are an effort to achieve compliance with the permitted effluent limitations.

23. On September 8, 2017, Gaunt Engineers, Inc., on behalf of Respondent, requested an extension of the CAP deadline until September 29, 2017. The Department granted the request.

24. On September 26, 2017, Respondent submitted a revised CAP detailing the initial steps and cost estimates for connecting to the City of Dumas wastewater treatment facility. The revised CAP contained a milestone schedule with a final date of compliance with the Permit of December 1, 2017.

## ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall comply with the terms, milestone schedule, and final compliance date of December 1, 2017, contained in the approved revised CAP. The milestone schedule and final compliance date of December 1, 2017, shall be fully enforceable as terms of this Order.
2. Respondent shall submit a final compliance report stamped by a Professional Engineer licensed in the state of Arkansas to the Department certifying that the facility is in compliance with the permitted effluent limits no later than January 1, 2018.
3. Within thirty (30) calendar days of the effective date of this Order, Respondent shall submit an interim operating plan that describes, in detail, the operational measures that will be taken to consistently maintain compliance with the Permit. Respondent shall implement the interim operating plan immediately upon its submittal to ADEQ.
4. Within ninety (90) days of the effective date of this Order, Respondent shall submit a revised CAP containing a plan for connecting Respondent's wastewater collection system to the City of Dumas wastewater treatment plant and a construction timeline with a completion date. The terms in this revised CAP, including the construction timeline with completion date, shall be fully enforceable as terms of this Order.
5. Respondent shall submit quarterly progress reports to the Department detailing the work completed to connect Respondent's wastewater collection system to the City of Dumas wastewater treatment plant. The first progress report shall be due one hundred twenty (120) days from the effective date of this Order and subsequent progress reports shall be submitted quarterly thereafter until the construction is complete and Respondent's facility has been properly closed.
6. 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

(\$4,200.00) or one-half of the full civil penalty of TWO THOUSAND ONE HUNDRED DOLLARS (\$2,100.00) if this Order is signed and returned to the Water Division Enforcement Branch, ADEQ, 5301 Northshore Drive, North Little Rock, Arkansas, 72118-5317, prior to December 8, 2017. Even if the conditions for receiving a reduced penalty of two thousand one hundred dollars (\$2,100.00) have been met, failure to otherwise comply with this Order will result in the Penalty reverting to the full civil penalty of four thousand two hundred dollars (\$4,200.00). 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:

ADEQ, 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

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

15. 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 the civil penalty set out in this Order. See Exhibit A.



SO ORDERED THIS 5th DAY OF December, 2017.

Becky W. Keogh  
BECKY W. KEOGH DIRECTOR

APPROVED AS TO FORM AND CONTENT:

City of Mitchellville

BY: Carl Griswold Mayor  
(Signature)

Carl Griswold  
(Typed or printed name)

TITLE: Mayor

DATE: 12/15/2017

RESOLUTION NO. 2017-3

**A RESOLUTION TO ENTER INTO CONSENT ADMINISTRATIVE ORDER ("CAO") WITH THE ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY ("DEPARTMENT") CONCERNING CITY OF MITCHELLVILLE WASTEWATER TREATMENT FACILITY (FACILITY").**

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MITCHELLVILLE, ARKANSAS:

SECTION 1: DEFINITIONS for purposes of this ordinance.

(a) City of Mitchellville is a duly organized and incorporated town of the State of Arkansas, operated under aldermanic form of government.

(b) Arkansas Department of Environmental Quality is a Department of the State of Arkansas tasked with ensuring compliance with environmental law and regulation within the State.

(c) Consent Administrative Order is an administrative remedy used by the Department to settle issues of significant non-compliance.

(d) Facility is the Mitchellville Wastewater Treatment facility located one (1) mile north of the City on the eastside of U.S Highway 65 in Desha County, Arkansas.

(e) City was issued National Pollutant Discharge Elimination System (NPDES) Permit Number AR0037125 on September 28, 2011, effective on October 1, 2011; and renewed on October 1, 2016.

(f) Violations of permitted effluent discharge limits are contained in certified Discharge Monitoring Reports (DMRs) gathered from August 31, 2014, to August 31, 2017, and submitted by City to the Department.

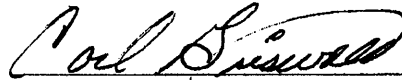
SECTION 2: The City and Department have reached an agreement in compromise and full settlement for violations specified in the attached Findings of Fact.

SECTION 3: THE CONSENT ADMINISTRATIVE ORDER IN ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY, IN THE MATTER OF: CITY OF MITCHELLVILLE, LIS NO. 17- PERMIT NO. AR0097125, AFIN 21-0046 (ATTACHMENT) is hereby reviewed and approved; that the Mayor and City Clerk/Treasurer are hereby authorized to sign the Consent Administrative Order on behalf of the City; and to expend such funds necessary for the compliance activities required by the Order, including but not limited to the payment of the civil penalty as contained therein.

SECTION 4: That a certified copy of this Resolution be delivered to the Arkansas Department of Environmental Quality with payment of \$2,100.00 prior to December 8, 2017.

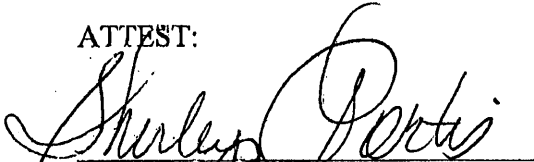
PASSED AND ADOPTED this 5 day of December, 2017.

APPROVED:



Carl Griswold, Mayor

ATTEST:



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Shirley Potts, Recorder