

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Humphrey  
P.O. Box 128  
Humphrey, AR 72073

LIS No. 19-089  
Permit No. AR0022284  
AFIN 35-00142

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 Humphrey (“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 plant (“facility”) located on West Union Ave, one mile southwest of the intersection of Arkansas Highway 13 and U.S. Highway 79 in Humphrey, Jefferson County, Arkansas.
2. Respondent discharges treated wastewater into an unnamed ditch, thence to Lateral No. 5 ditch, thence to Salt Bayou Ditch, thence to Little Bayou Meto, thence to Wabaseka Bayou, thence to the Arkansas River in Segment 3A 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. The Department issued NPDES Permit Number AR0022284 (“Permit”) to Respondent on November 23, 2015. The Permit became effective on December 1, 2015, and expires on November 30, 2020.

10. On October 8, 2018, the Department conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.

11. 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 September 1, 2015, through August 31, 2018:

- a. Nine (9) violations for Fecal Coliform Bacteria;
- b. Seven (7) violations for Total Suspended Solids; and
- c. One (1) violation for Dissolved Oxygen.

12. Each of the seventeen (17) discharge limitation violations listed in Paragraph 11 above constitutes a separate permit violation for a total of seventeen (17) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

13. On October 9, 2018, the Department sent Respondent a letter requesting a Corrective Action Plan (CAP) to address the violations of the permitted effluent limitations. The CAP was to have a milestone schedule, a final date of compliance, and be certified by a Professional Engineer (P.E.) licensed in the state of Arkansas.

14. On November 2, 2018, Respondent submitted a CAP to the Department with a final compliance date of January 31, 2020.

15. On January 10, 2019, the Department held a meeting with Respondent to discuss the corrective actions in the CAP submitted on November 2, 2018. During the meeting, Respondent requested to submit a revised CAP to update the milestone schedule and final date of compliance.

16. On February 6, 2019, Respondent submitted a revised CAP to the Department. The CAP had a final compliance date of September 30, 2020.

17. On February 19, 2019, the Department sent Respondent a letter approving the CAP submitted on February 6, 2019.

18. On July 24, 2019, the Department conducted a follow-up review of the certified DMRs submitted by Respondent in accordance with the Permit.

19. 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 September 1, 2018, through June 30, 2019:

- a. Seven (7) violations for Fecal Coliform Bacteria;
- b. Two (2) violations for Total Suspended Solids; and
- c. One (1) violation for Dissolved Oxygen

20. Each of the ten (10) discharge limitation violations listed in Paragraph 19 above constitutes a separate permit violation for a total of ten (10) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

### **ORDER AND AGREEMENT**

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall implement the approved CAP in accordance with the milestone schedule contained in the CAP submitted to ADEQ on February 6, 2019. The approved CAP, the milestone schedule, and the final compliance date of September 30, 2020, 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

with the final permitted effluent limits and Part I, Section A of the Permit. Respondent shall submit the final compliance report by September 30, 2020.

3. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Three Thousand Two Hundred Dollars (\$3,200.00) or one-half of the full civil penalty of One Thousand Six Hundred Dollars (\$1,600.00) 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:

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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

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

12. 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 27 DAY OF September, 2019.

Becky W Keogh  
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

City of Humphrey

BY: Cleveland Hatch  
(Signature)

CLEVELAND HATCH  
(Typed or printed name)

TITLE: MAYOR

DATE: 9-9-19



POST  
SEP 16 2019  
MARKED

HUMPHREY CITY COUNCIL MEETING  
September 9, 2019

V00003UHN

RECEIVED  
SEP 19 2019  
7:00

The Humphrey City Council met in regular session on September 9, 2019 in City Hall at 7:00 P.M. Mayor Cleveland Hatch called the meeting to order and led the prayer. The Pledge of Allegiance was led by Mayor Cleveland Hatch. Those answering roll call were as follows:

Mayor Cleveland Hatch  
City Attorney Elizabeth Skinner  
Recorder/Treasurer Kimberly Burgess

Council members:  
Chad Burgess  
Donald Ray Combs  
Wayne Moring  
Glen Persons

Old Business:

Mayor Hatch stated that there was a public hearing prior to the council meeting at 6:00 p.m. The public hearing was concerning the renaming of Railroad Ave. to Buccie Cline Sr. Avenue. There were no citizens at the meeting, that opposed, the renaming of the avenue. Motion was made by Combs and seconded by Persons to rename the avenue. Mayor Hatch asked if there were any concerns. There were none.

AYES: Burgess, Combs, Moring, Persons  
NAYS: None

Mayor Hatch stated that State Aid came on 8/8/2019 for the overlay of some of the city streets. He said that the city will be applying for \$250,000.00, which is the maximum amount that can be applied for. If the city does receive any funding from State Aid it will be the first part of 2020 before the city knows if it is approved. It will be late summer of 2020 before any work will actually begin.

Motion to approve the old business was made by Persons and the second was made by Combs.  
AYES: Burgess, Combs, Moring, Persons  
NAYS: None

New Business:

Resolution 2019-2 to adopt a fixed asset policy was read by City Attorney Skinner. Motion was made by Persons and seconded by Combs to adopt Resolution 2019-2. Motion carried.  
AYES: Burgess, Combs, Moring, Persons  
NAYS: None

Resolution 2019-3 to levy a 5-mil general tax on property in the City of Humphrey was read by City Attorney Skinner. Motion was made by Moring and seconded by Persons to adopt Resolution 2019-3. Motion carried.  
AYES: Burgess, Combs, Moring, Persons  
NAYS: None

Mayor Hatch stated that ADEQ had come down and done a quality performance test on the wastewater plant. They discovered that the valves were not deep enough, so the discharge was not fluent enough to keep the algae from building up around the walls. ADEQ told Mayor Hatch that the issue needed to be addressed. Mayor Hatch contacted Civil Engineering Design, who came down and assessed the issue. Civil Engineering Design came up with a Corrective Action Plan. Mayor Hatch stated that ADEQ had approved the Corrective Action Plan. The city received a letter from ADEQ stating that if the city did not stay on track, according to the Corrective Action Plan, that there would be a penalty. The city received a permit from ADEQ on November 23, 2015 that expires on November 30, 2020. City Attorney Skinner stated that according to the documents ADEQ could fine up to \$10,000.00, per violation, according to state law. She also stated that between September 1, 2015 and August 31, 2018 there were seventeen (17) violations. Mayor Hatch said that he received notification and started trying to make corrections in October 2018. City Attorney Skinner stated that the city has until January 31, 2020 to meet the terms of the agreement. Mayor Hatch stated that the city could apply for an extension if we could not meet the deadline in January. City Attorney Skinner also stated that according to the documents the city has a civil penalty of \$1600.00 and if no extension was granted and the city was not in compliance, by the deadline, the city could have fines of \$100.00 per day for the 1st through the 14th day, and \$500.00 per day for the 15th through the 30th day. The penalty beyond the 30 days would be \$1,000.00 per day. Motion was made by Persons and seconded by Moring to authorize the Mayor and City Treasurer to expend funds for compliance activities required by this order including but not limited to the payment of a civil penalty set forth in this order. Motion carried.

AYES: Burgess, Combs, Moring, Persons

NAYS: None

Mayor Hatch said that CenterPoint Energy was doing work on Theresa Ave. and hit one of the city's water line. Mayor Hatch stated that the incident occurred around 3:00 p.m. and was repaired before 5:00 p.m.

There was discussion on the fall festival. The date for the fall festival will be on October 26th, 2019 from 5:00 p.m. until 9:00 p.m. Mayor Hatch stated that it cost \$35.00 to rent a booth. Anyone wishing to rent a booth needs to contact Ricci Lynn Persons.

Alderman Burgess addressed the council about the possibility of passing a sales tax for the fire department. City Attorney Skinner stated that to pass a sales tax it would have to go on the ballot for public vote. After some discussion City Attorney Skinner said that she would get something together to see if the council would like to move ahead with the sales tax.

Motion to adjourn was made by Moring and the second was by Persons.

AYES: Burgess, Combs, Moring, Persons

NAYS: None

  
Kimberly Burgess  
City Clerk/Treasurer

  
Cleveland Hatch  
Mayor