

IN THE CIRCUIT COURT OF FAULKNER COUNTY, ARKANSAS  
CIVIL DIVISION

ARKANSAS DEPARTMENT OF  
ENVIRONMENTAL QUALITY

PLAINTIFF

vs.

Docket No.: \_\_\_\_\_

FLUSHING MEADOWS WATER TREATMENT, INC.

DEFENDANT

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COMPLAINT

COMES NOW the Arkansas Department of Environmental Quality (ADEQ), by and through its attorneys, Basil V. Hicks III and Daniel Pilkington, and for its complaint against Flushing Meadows Water Treatment, Inc. (Defendant) states the following:

I. INTRODUCTION

1. This matter is a civil action brought under the authority of the Arkansas Water and Air Pollution Control Act (AWAPCA), Ark. Code Ann. § 8-4-101 *et seq.*, and Ark. Code Ann. § 8-5-701 *et seq.*, that seeks to enforce a Default Administrative Order (DAO) issued against Defendant by the Arkansas Department of Environmental Quality (ADEQ or Department), and further seeks civil penalties for previous environmental violations, as well as equitable relief for appointment of a receiver over a common sewage system.

II. PARTIES

2. ADEQ is an executive agency of the State of Arkansas charged with administering and enforcing all laws, rules, and regulations relating to the AWAPCA, Ark. Code Ann. § 8-4-101, *et seq.* and Ark. Code Ann. § 8-5-701 *et seq.* ADEQ has authority under Ark. Code Ann. § 8-4-

103(b) to institute a civil action in any court of competent jurisdiction to compel compliance with any orders, regulations, or permits issued pursuant to the AWAPCA; to affirmatively order that remedial measures be taken as may be necessary or appropriate to implement or effectuate the purposes and intent of the AWAPCA; to recover all costs and expenses in enforcing or effectuating the provisions of the statute; and to assess and recover civil penalties for violations of the AWAPCA. ADEQ has authority under Ark. Code Ann. § 8-5-701 *et seq.* to seek to remedy chronic violations by any common sewage system. ADEQ's principle office is located at 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317.

3. Defendant is an Arkansas corporation registered with the Arkansas Secretary of State with a principal business address of 6 Kalli Circle Vilonia, AR 72173. Nathan Miller is the President and Lorene Miller is the Treasurer for Defendant.

4. The wastewater treatment facility owned and operated by Defendant is located at 77 Brewer Road, Conway in Faulkner County, Arkansas.

### **III. JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction over this matter under Ark. Code Ann. § 16-13-201. This Court has personal jurisdiction over Defendant as their principal place of business is located in Faulkner County, Arkansas.

6. Venue is proper in this Court under Ark. Code Ann. §§16-60-101 and 103.

### **IV. FACTUAL ALLEGATIONS**

7. Defendant owns and operates a wastewater treatment facility ("facility") located at 77 Brewer Road, Conway in Faulkner County, Arkansas.

8. The facility is regulated pursuant to the National Pollutant Discharge Elimination System (NPDES), 33 U.S.C. § 1342, as administered by ADEQ pursuant to Arkansas Pollution Control & Ecology Commission (APC&EC) Regulation No. 6.
9. ADEQ issued NPDES Permit Number AR0048879 ("Permit") to Defendant for operation of the facility on January 31, 2005, with an effective date of March 1, 2005. The most recent renewal of the Permit was: issued on July 17, 2015, became effective on August 1, 2015, has an expiration date of July 31, 2020, and is attached hereto as Exhibit 1.
10. ADEQ inspected Defendant's facility and reviewed the Discharge Monitoring Reports (DMRs) submitted to ADEQ by Defendant as required by the Permit. The inspection and DMRs revealed numerous violations of the AWAPCA, APC&EC regulations, and Permit conditions.
11. Because of the numerous violations of the Permit and applicable law, ADEQ issued a Notice of Violation, LIS No. 17-095, dated November 9, 2017 (NOV), attached hereto as Exhibit 2 and incorporated herein by reference. Defendant was served with the NOV on November 30, 2017. Proof of service by "Affidavit of Process Server" is attached as Exhibit 3.
12. Defendant was advised that Defendant must file a request for hearing with APC&EC pursuant to APC&EC Regulation No. 8 to dispute the proposed finding of facts or civil penalties. No Request for Hearing on the NOV was filed on behalf of Defendant with the APC&EC. Therefore, pursuant to APC&EC Reg. 8.402, the allegations in the NOV are deemed proven.
13. On January 10, 2018, Defendant met with ADEQ to discuss the NOV. On February 21, 2018, ADEQ sent a letter to Defendant in response to the January 10, 2018 meeting. ADEQ's February 21, 2018 letter is attached as Exhibit 4.
14. Defendant submitted a response dated March 8, 2018, to ADEQ. Defendant's March 8, 2018 response is attached as Exhibit 5.

15. After reviewing Defendant's March 8, 2018 response, ADEQ sent Defendant a letter dated May 9, 2018 that identified the deficiencies in Defendant's response. That letter also identified those items that were adequately addressed. ADEQ's May 9, 2018 letter is attached as Exhibit 6.

16. After Defendant failed to adequately address the deficiencies listed in ADEQ's May 9, 2018 letter, the Director of ADEQ issued a Default Administrative Order (DAO) dated July 13, 2018 (attached hereto as Exhibit 7 and incorporated herein by reference) assessing Defendant a civil penalty in the amount of Seventy-Nine Thousand Four Hundred and Fifty Dollars (\$79,450.00).

17. The DAO was served on Defendant through Nathan Miller, Registered Agent for Defendant, on August 3, 2018. The USPS Domestic Return receipt signed by Mr. Miller is attached as Exhibit 8. The USPS Tracking information for Tracking Number: 70063450000340702294 is attached as Exhibit 9.

18. On August 30, 2018, Defendant informed ADEQ that that Defendant had signed a letter of intent to sell the facility to Central States Water Resources. The letter of intent and associated information provided by Defendant is attached as Exhibit 10.

19. Defendant failed to comply with the DAO.

20. In 2018, Defendant reported permit violations in its first, second, and third quarter DMRs and two discharges of untreated waste water from Defendant's collection system. ADEQ received complaints about the discharges of untreated waste water from Defendant's collection system.

## V. VIOLATIONS OF LAW

### **COUNT I. FAILURE TO COMPLY WITH AN ORDER ISSUED BY THE DIRECTOR OF ADEQ PURSUANT TO THE AWAPCA**

21. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 20 of this Complaint.

22. Defendant did not file a Request for Hearing on the NOV within twenty (20) calendar days of receipt of the NOV. Therefore, the facts and regulatory violations recited in the NOV are deemed proven and the Director's issuance of the DAO was proper pursuant to APC&EC Reg. 8.402 and the AWAPCA.

23. Defendant has failed to comply with the Default Administrative Order issued by the Director of ADEQ.

24. Pursuant to Ark. Code Ann. §§ 8-4-103(b) and 8-4-201, ADEQ may initiate civil court actions to enforce orders and recover penalties issued pursuant to the AWAPCA. The DAO was issued pursuant to the AWAPCA. See Exhibit 4.

25. Accordingly, ADEQ institutes this civil action to compel compliance with the DAO, to affirmatively order that remedial measures be taken, to compel payment of the Seventy-Nine Thousand Four Hundred and Fifty Dollars (\$79,450.00) civil penalty from Defendant as set out in the DAO, and to recover all costs, expenses, and damages to the Department in enforcing or effectuating the provision of the AWAPCA.

26. ADEQ seeks a judgment granting all relief requested above.

### **COUNT II. FAILURE TO COMPLY WITH THE PERMIT IN 2018**

27. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 26 of this Complaint.

28. Pursuant to the Permit, Defendant submitted DMRs to ADEQ for the first, second and third quarters of 2018. Defendant is required by its Permit to monitor effluent characteristics and to submit DMRs to ADEQ with the results of those monitoring tests. The results of these monitoring tests are compared to the effluent limits in Defendant's Permit. Each exceedance of Defendant's effluent limits is a permit violation.

29. Ark. Code Ann. § 8-4-217(a)(3) provides that it shall be unlawful for any person to violate any provision of a permit issued under the provisions of the AWAPCA.

30. On April 25, 2018, Defendant submitted its DMR for the monitoring period ending on Mach 31, 2018, with the following results:

Monitoring Period End Date	Pollutant	Reported	Permit Limit	Violation %
3/31/2018	Nitrogen, ammonia total [as N] (MO AVG, mg/L)	24	15	60%
3/31/2018	Nitrogen, ammonia total [as N] (DAILY MX, mg/L)	24	22.5	7%
3/31/2018	BOD, carbonaceous [5 day, 20 C] (MO AVG, mg/L)	18.6	15	24%
3/31/2018	Coliform, fecal general (30DA GEO, #/100mL)	TNTC	1000	99999%
3/31/2018	Coliform, fecal general (7 DA GEO, #/100mL)	TNTC	2000	99999%

Coliform, fecal general, is reported as TNTC. TNTC means that the number of colonies per 100 ml of effluent was Too Numerous To Count (TNTC) based on the testing method used by the lab. Defendant's DMR for the monitoring period ending on Mach 31, 2018 is attached as Exhibit 11. The laboratory's report of the analytical results for this DMR is attached as exhibit 12.

31. The results from the DMR in paragraph 30 exceed allowed permit limits contained in Part I, Section A of the Permit, and are therefore violations of the permit and Ark. Code Ann. § 8-4-217(a)(3).

32. On July 24, 2018, Defendant submitted its DMR for the monitoring period ending on June 30, 2018, with the following results:

Monitoring Period End Date	Pollutant	Reported	Permit Limit	Violation %
6/30/2018	Coliform, fecal general (30DA GEO, #/100mL)	>2420 (TNTC)	1000	99999%
6/30/2018	Coliform, fecal general (7 DA GEO, #/100mL)	>2420 (TNTC)	2000	99999%

Coliform, fecal general, is reported as >2420 (TNTC). The reported value of “>2420 (TNTC)” means that the number of colonies per 100 ml of effluent was greater than the maximum number of colonies that could be counted using that testing method. Defendant’s DMR for the monitoring period ending on June 30, 2018 is attached as Exhibit 13. The laboratory’s reports of the analytical results for this DMR are attached as Exhibit 14 and Exhibit 15.<sup>1</sup>

33. The results from the DMR in paragraph 32 exceed allowed permit limits, and are therefore violations of the permit and Ark. Code Ann. § 8-4-217(a)(3).

34. On August 26 and 27, 2018, ADEQ received complaints that the Defendant’s southwest pump station was overflowing and that the untreated waste was flowing into the nearby storm drain. On September 5, 2018, Defendant submitted an incident report to ADEQ and confirmed that two separate overflows had occurred. Both overflows discharged untreated waste from Defendant’s collection system, and those discharges did not flow through the permitted outfall, Outfall 001. The incident report is attached as Exhibit 16.

35. Discharge of untreated waste from the collection system is not permitted by Defendant’s Permit. Part I of the Permit authorizes Defendant to discharge from Outfall 001 and states that Defendant’s discharge from Outfall 001 shall be limited and monitored as specified in the

<sup>1</sup> Defendant provided analytical results for the sample taken on April 23, 2018 (Exhibit 14) and for the sample taken on June 14, 2018 (exhibit 15), and both samples produced a result of TNTC for Fecal Coliform.

Permit. Thus, both discharges from the collection system are violations of Defendant's Permit and therefore are violations of Ark. Code Ann. § 8-4-217(a)(3).

36. On October 25, 2018, Defendant submitted its DMR for the monitoring period ending on September 30, 2018, with the following results:

Monitoring Period End Date	Pollutant	Reported	Permit Limit	Violation %
9/30/2018	Coliform, fecal general (30DA GEO, #/100mL)	>2420	1000	99999%
9/30/2018	Coliform, fecal general (7 DA GEO, #/100mL)	>2420	2000	99999%

Coliform, fecal general, is reported as >2420. The reported value of ">2420" means that the number of colonies per 100 ml of effluent was greater than the maximum number of colonies that could be counted using that testing method. Defendant's DMR for the monitoring period ending on September 30, 2018 is attached as Exhibit 17. The laboratory's reports of the analytical results for this DMR are attached as Exhibit 18.

37. The results from the DMR in paragraph 36 exceed allowed permit limits, and are therefore violations of the permit and Ark. Code Ann. § 8-4-217(a)(3).

38. ADEQ seeks a judgment for the imposition of the maximum penalties allowable pursuant to AWAPCA for the permit violations referenced above.

### **COUNT III. PETITION FOR RECEIVERSHIP**

39. The allegations specified in Paragraphs 1–38 are incorporated by reference and included herein as if repeated word for word.

40. Pursuant to Ark. Code Ann. § 8-5-702, ADEQ may petition a court of competent jurisdiction and proper venue to remedy chronic violations by a common sewage system, including but not limited to a petition for appointment of a nominated receiver.



41. Defendant is a “common sewage system” as defined in Ark. Code Ann. § 8-5-701(2)(A).<sup>2</sup>

42. The Defendant’s history of noncompliance evidences their inability to operate and maintain the system in compliance with the law, and ADEQ petitions this Court to appoint a receiver subject to the continuing jurisdiction of the Court.

43. Pursuant to Ark. Code Ann. § 8-5-702(c)(1), ADEQ nominates as potential receivers Hawkins-Weir Engineers, Inc. and Communities Unlimited, Inc. Both potential receivers have agreed to nomination under the following conditions:

a. Defendant provides the following information concerning

Defendant’s operations:

- Billing and collection records for the last five years;
- State and Federal Tax Records for the past five years;
- General Ledger for the past five years, including without limitation:
  - Income Statements,
  - Statement of Cash Flow,
  - Statements for bank and other fund accounts,
  - Accounting of expenses for all wastewater related activities, and
  - Statement of Assets and Liabilities; and
- Statement of debts owed by Defendant.

b. Each potential receiver is given the opportunity to review the information provided by Defendant before final acceptance of the receivership.

This information is necessary for either potential receiver to exercise any and all legal powers and rights assigned by law to the original owner or operator of the common sewage system pursuant to Ark. Code Ann. § 8-5-702.

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<sup>2</sup> Ark. Code Ann. § 8-5-701 (2)(A) “Common sewage system” means any sewage treatment system and its associated sewage collection and pumping facilities, nonmunicipal, publicly or privately owned, serving two (2) or more individually owned, rented, or temporarily occupied lots for the purpose of the collection or disposal of sewage.

## PRAYER FOR RELIEF


WHEREFORE, the above premises considered, ADEQ respectfully requests that this Court grant the following relief:

- (A) Issue a judgment compelling the Defendant to comply with the requirements contained in the Default Administrative Order issued against the Defendant;
- (B) Issue a judgment against the Defendant in the amount of Seventy-Nine Thousand Four Hundred and Fifty Dollars (\$79,450.00) for civil penalties assessed in the DAO;
- (C) Issue a judgment compelling the Defendant to provide an accounting of its operations, including the following information concerning Defendant's operations:
  - Billing and collection records for the last five years;
  - State and Federal Tax Records for the past five years;
  - General Ledger for the past five years, including without limitation:
    - Income Statements,
    - Statement of Cash Flow,
    - Statements for bank and other fund accounts,
    - Accounting of expenses for all wastewater related activities, and
    - Statement of Assets and Liabilities; and
  - Statement of debts owed by Defendant.
- (D) Grant the Petition for Receivership as stated in Count III and enter an order appointing a receiver, or in the alternative, schedule a hearing on the petition for receivership;

- (E) Impose the maximum penalties allowable under the law against the Defendant for failure to comply with the Default Administrative Order and reduce this amount to judgment;
- (F) Impose the maximum penalties allowable under the law against the Defendant for violations of Defendant's Permit and the AWAPCA as stated in Count II and reduce this amount to judgment;
- (G) Award costs and attorney's fees to ADEQ; and
- (H) For any and all other relief to which ADEQ may be entitled.

Respectfully Submitted,

Arkansas Department of Environmental  
Quality

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