

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Garland
P.O. Box 9
Garland, AR 71839

LIS No. ~~17~~ 18-006
Permit No. AR0050857
AFIN 46-00089

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 Garland ("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 municipal wastewater treatment facility ("facility") located on County Road 381, Garland, Miller County, Arkansas.
2. Respondent discharges treated wastewater to the Red River in Segment 1B of the Red 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 AR0050857 (“Permit”) was issued to Respondent on February 29, 2008. The Permit became effective on April 1, 2008, and expired on May 31, 2013.
10. On February 13, 2013, Respondent submitted a Permit renewal application. The Permit application was deemed administratively complete on February 28, 2013.
11. On June 20, 2017, the Department conducted a Reconnaissance Inspection of the facility. During the inspection, the Department reviewed the flow discharge records for May 2015,

November 2015, December 2015, January 2016, February 2016, and April 2016. The flow data indicated that the facility had a discharge during the months of May 2015, November 2015, December 2015, January 2016, February 2016, and April 2016.

12. The Discharge Monitoring Reports (DMRs) submitted by Respondent for May 2015, November 2015, December 2015, January 2016, February 2016, and April 2016, indicated “No Discharge” during their respective monitoring periods. This is a violation of Part III, Section D, Item 13 of the permit and Ark. Code Ann. § 8-4-217(a)(4) and therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

13. On July 21, 2017, Respondent notified ADEQ that Sue Townsend is the new operator for the facility and that she will be responsible for submitting the DMRs to the Department.

14. On July 28, 2017, the Department notified Respondent of the inspection results and requested a written response to the violations noted in the inspection report. Respondent did not submit a written response.

15. On September 12, 2017, the Department notified Respondent of their failure to respond to the June 20, 2017 inspection and requested that a written response to the violations noted in the inspection report be submitted to the Department by September 26, 2017.

16. On October 3, 2017, the Department received the Respondent’s response to the violations noted in the June 20, 2017 inspection.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall comply with the existing Permit until either the effective date of the permit renewal or the effective date of the permit termination.
2. Upon the effective date of this Order, Respondent shall submit to ADEQ corrected DMRs for the following monitoring periods: May 1–31, 2015; November 1–30, 2015; December 1–31,

2015; January 1–31, 2016; February 1–29, 2016; and April 1–30, 2016. If a sample was not taken, then Respondent must report “Analysis Not Conducted” on the DMRs.

3. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of One Thousand Six Hundred Dollars (\$1,600.00), or one-half of the full civil penalty of Eight Hundred Dollars (\$800.00) 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, no later than 20 days from 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, 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.

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 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.

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 which 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 ___.

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

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 in the amount of set out in this Order. See Exhibit ___.

SO ORDERED THIS 10 DAY OF January, 2017.³

Becky W Keogh
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

City of Garland

BY: Tyeshka Antwine
(Signature)

Tyeshka Antwine
(Typed or printed name)

TITLE: Mayor

DATE: 12-27-2017

CITY OF GARLAND
DECEMBER 27, 2017
SPECIAL MEETING
7:00 PM

PRESENT: MAYOR ANTWINE, RECORDER/TREASURER DUDLEY, ATTORNEY WHITEFIELD, COUNCIL MEMBERS PREE, COULTER, ROOTERS, DAVIS AND GULLEY **ABSENT:** FIRE CHIEF BALL

MAYOR AND COUNCIL SET 2018 BUDGETS FOR GENERAL FUND, WATER AND SEWER FUND AND STREET AND HIGHWAY FUND.

COUNCIL AGREED TO TABLE FILLING WARD 2 PLACE 2 VACANT SEAT UNTIL JANUARY 8, 2018 REGULAR MEETING.

MAYOR ANTWINE EXPLAINED ADEQ WASTEWATER FINDINGS. COUNCIL MEMBER COULTER ASKED MAYOR ANTWINE IF CITY PAY FINE WILL THAT MAKE US LIABLE BECAUSE WATER OPERATOR WASN'T SENDING IN ALL DMR REPORTS. MAYOR ANTWINE INFORMED COUNCIL THAT SHE WASN'T AWARE DAVID GREEN WASN'T SENDING IN ALL DMR REPORTS BECAUSE SHE HADN'T RECEIVED ANYTHING IN THE MAIL AND NOW ALL DMR REPORTS ARE KEPT IN CITY HALL. I RECORDER/TREASURER DUDLEY INFORMED COUNCIL THAT I WAS PAYING BILL TO ADEQ SO WE DIDN'T HAVE ANY KNOWLEDGE HE WASN'T SENDING IN DMR.


COUNCIL MEMBER DAVIS MADE MOTION TO APPROVE CONSENT ADMINISTRATIVE ORDER FINDINGS OF FACTS AND TO PAY ADEQ WASTEWATER \$800.00 FOR FINDING OF FACTS. SECOND BY COUNCIL MEMBER PREE. ROLL CALL. ALL PRESENT VOTED YEA.

COUNCIL MEMBER ROOTERS MADE MOTION TO TRANSFER \$4000.00 FROM GENERAL FUND ACCOUNT TO WATER FUND ACCOUNT. SECOND BY COUNCIL MEMBER DAVIS. ROLL CALL. ALL PRESENT VOTED YEA.

COUNCIL MEMBER PREE MADE MOTION TO ADJOURN MEETING. SECOND BY COUNCIL MEMBER DAVIS. ROLL CALL. ALL PRESENT VOTED YEA.



TYSHEKA ANTWINE, MAYOR



LINDA DUDLEY, RECORDER/TREASURER