

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Lake View  
14264 Highway 44  
Helena, AR 72342

LIS No. ~~18~~-19-004  
Permit No. AR0041327  
AFIN 54-00101

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 Lake View ("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 Wall Street, Lake View, Phillips County, Arkansas.
2. Respondent discharges treated wastewater to Johnson Bayou, thence to Big Creek, thence to the White River in Segment 4A of the White 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. § 8-4-217(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 department:

...

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

8. 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.

9. 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.”

10. The Department issued NPDES Permit Number AR0041327 ("Permit") to Respondent on November 23, 2016. The Permit became effective on December 1, 2016, and expires on November 30, 2021.

#### Inspection Violations

11. On August 24, 2018, the Department conducted a Reconnaissance Inspection of the facility. The inspection revealed the following violations:

- a. The main wastewater transmission line on Wall Street was broken. Untreated wastewater was discharging from the broken transmission line and flowing into drainage ditch on the north side of Wall Street. Respondent is permitted to discharge treated municipal wastewater from Outfall 001. Respondent is not permitted to discharge untreated wastewater from the collection system. Respondent is not permitted to discharge untreated wastewater into waters of the state. The discharge of untreated wastewater from the broken transmission line into waters of the state is a violation of Part I Section A and Part II Condition 5 of the Permit and Ark. Code Ann. § 8-4-217(b)(1)(E), and therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).
- b. The operator of this facility is required to hold a minimum of a Class II Wastewater Operator license issued by ADEQ pursuant to APC&EC Regulation 3. The current wastewater operator of this facility holds a Class I Wastewater Operator license. This is a violation of Part II Condition 1 of the Permit, APC&EC Regulation 3.501, and therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

c. The following conditions demonstrate Respondent's failure to properly operate and maintain the facility and systems of treatment and control that are installed or used by Respondent to achieve compliance with the conditions of the Permit:

- (i) The wastewater lagoons were dry and overgrown with vegetation and trees;
- (ii) The sand filter distribution lines were disconnected, and the sand filter was covered with vegetative growth; and
- (iii) The chlorine contact chamber was overgrown with vegetation.

These conditions are violations of Part III, Section B, Condition 1, Parts A and B of the Permit and are therefore violations of Ark. Code Ann. § 8-4-217(a)(3).

12. On August 31, 2018, the Department notified Respondent of the inspection results and requested a written response to the violations cited in the inspection report.

13. On September 11, 2018, Respondent emailed a photograph, dated August 29, 2018, of the wastewater lagoon to the Department. On September 19, 2018, Respondent faxed correspondence, including photographs, to the Department stating that the force main along Wall Street had been repaired. The photographs supplied were not clear, and the Department requested that the photographs be supplied by email. To date, Respondent has not submitted an adequate response to the violations cited in the inspection report.

#### Failure to Pay Annual Permit Fees

14. ADEQ is required by Ark. Code Ann. § 8-1-103(3) to collect fees as established by the APC&EC.

15. APC&EC Reg. 9.301(D) provides that:

A permitted facility failing or refusing to pay the annual fee in a timely manner shall be subject to a late payment charge as

established in these regulations. Continued failure or refusal to pay the required fees after a reasonable notice shall constitute grounds for legal action by the Department that may result in revocation of the permit.

16. On March 1, 2018, ADEQ issued invoice number PDS-166736 for annual fees for NPDES Permit Number AR0041327 with the amount due of Six Hundred Twenty-Six Dollars (\$626.00). Respondent failed to make payment in a timely manner and late charges of Sixty-Two Dollars Sixty Cents (\$62.60) accrued.

17. To date, Respondent has failed to pay the invoice or the late fees. The total amount due for invoice PDS-166736 is Six Hundred Eighty-Eight Dollars Sixty Cents (\$688.60). This failure is a violation of Part III, Section A, Condition 11 of the Permit, Ark. Code Ann. § 8-4-217(a)(3), and APC&EC Reg.9.301(D).

#### ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. On or before the effective date of the Order, Respondent shall submit to the Department a Corrective Action Report that shall include the following:
  - a. Documentary and photographic evidence of the actions taken to correct the violations noted in Finding of Fact Paragraph 11; and
  - b. A certification from a Professional Engineer licensed in the state of Arkansas that:
    - (i) The leak in the main wastewater distribution line on Wall Street has been repaired, and the untreated wastewater is no longer discharging to a drainage ditch;
    - (ii) The sand filter distribution lines have been reconnected; and
    - (iii) The system is operating properly.

2. Within thirty (30) days of the effective date of the Order, Respondent shall submit to the Department proof of employment of a Class II Wastewater Operator, licensed by the Department in accordance with APC&EC Regulation 3, for the facility.
3. Within sixty (60) days of the effective date of the Order, Respondent shall submit to the Department an Operation and Maintenance Schedule. The schedule shall include the following information:
  - a. A log to document when qualified personnel are present at the plant and what services the qualified personnel conducted at that time;
  - b. A schedule to set the frequency for the maintenance tasks below and a log to document completion of the maintenance tasks:
    - i. Routine lagoon inspections and maintenance, including checking the lagoons for vegetation and removing any vegetation observed;
    - ii. Routine chlorine contact chamber inspections and maintenance, including checking for vegetation and removing any vegetation and ensuring chlorine tablets are inserted properly in the chamber;
    - iii. Routine sand filter maintenance, including checking the sand filters for vegetation and removal of vegetation; and
    - iv. Routine lift stations inspections and maintenance, including checking for and documenting proper operation.
4. On or before the effective date of this Order, Respondent shall pay Six Hundred Eighty-Eight Dollars Sixty Cents (\$688.60) for the annual and late fees associated with invoice PDS-166736. The total amount shall be made payable to the Arkansas Department of Environmental Quality and mailed to:

ADEQ, Fiscal Division  
PDS-166736  
5301 Northshore Drive  
North Little Rock, AR 72118-5317

5. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Eight Thousand Four Hundred Dollars (\$8,400.00), or one-half of the full civil penalty of Four Thousand Two Hundred Dollars (\$4,200.00) 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. Even if the conditions for receiving a reduced penalty of Four Thousand Two Hundred Dollars (\$4,200.00) have been met, failure to otherwise comply with this Order will result in the penalty reverting to the full civil penalty of Eight Thousand Four Hundred Dollars (\$8,400.00). 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

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

14. 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 9th DAY OF January, 2018<sup>9</sup>

Becky W. Keogh  
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

City of Lake View  
[Signature]

BY: [Signature]  
(Signature)

Darrin Davis  
(Typed or printed name)

TITLE: Mayor

DATE: 12/29/18

**City of Lake View  
City Council Special Call Meeting  
December 29, 2018**

The meeting was called to order at 12:00 p.m. by Mayor Davis as the quorum was recognized.

**Roll Call:**

Present were Aldermen: Christine Blakely, Eva Gammon, Brenda Ross, Kitonia Wade, and Blanche Johnson

Absent: Lawrence Mansfield, Man Childs, and Luevenia Davis.

A special call meeting was held on December 29, 2018 to pass the approval for 2019 Budget Ordinance #5-2019. The projected revenue is \$178, 767 and allocated expenditures are \$ 176, 767.00 for General Fund. The projected revenue is \$28,767.00 and allocated expenditures are \$28, 442.00 for Street Fund. It was moved by Gammon and seconded by Blakely that the budget be accepted with any noted correction. All voted yea, motion carried.

The Council also approved an ADEQ- Proposed Consent Administrative Order. In regards to NPDES permit number AR0041327 for violation of the finding in the civil penalty amount of \$4,200 for the wastewater treatment plant located on Wall Street in Lake View, Phillips County, AR. It was moved by Johnson and seconded by Ross to pay the civil penalty; all voted yea, motion carried.

It was moved by Gammon and seconded by Johnson that the meeting be adjourned. All voted yea, motion carried. Meeting adjourned at 12:30p.m.

Darrin Davis, Mayor



Shirley Rose, Recorder

