

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Searcy
401 West Arch
Searcy, AR 72143

LIS No. 18-047
Permit Tracking No. ARR000061
AFIN 73-00339

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (“Order”) is issued pursuant to the authority of the Arkansas Water and Air Pollution Control Act (“the 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 Searcy, (“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 Solid Waste Transfer Station (“Facility”) located at 2012 Eastline Road, Searcy, White County, Arkansas.
2. Respondent is regulated pursuant to the National Pollutant Discharge Elimination System (NPDES).
3. 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).

4. ADEQ is authorized under the Act to issue NPDES permits in the state of Arkansas and to initiate an enforcement action for any violation of an NPDES permit.

5. 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].

6. 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.

7. 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.”

8. In accordance with 40 C.F.R. § 122.26(c), as adopted by APC&EC Regulation No. 6, dischargers of stormwater associated with industrial activity under Standard Industrial Classification code 4212 are required to obtain coverage under the NPDES Industrial Stormwater General Permit ARR000000. ADEQ issued the NPDES Industrial Stormwater General Permit with an effective date of July 1, 2009, and an expiration date of June 30, 2014. ADEQ issued the current NPDES Industrial Stormwater General Permit with an effective date of July 1, 2014, and an expiration date of June 30, 2019.

9. ADEQ issued Industrial Stormwater General Permit coverage to Respondent for discharge of stormwater into waters of the state pursuant to the NPDES Industrial Stormwater

General Permit, Permit Tracking Number ARR000061 (“Permit”) with a coverage date of July 7, 2011, and an expiration date of June 30, 2014.

10. Respondent has operated the Facility beyond the June 30, 2014 expiration date of the general permit.

11. On December 12, 2013, and May 22, 2014, Respondent was notified that the Permit would expire on June 30, 2014, and that in order to continue the regulated activity, a complete Renewal Notice of Intent (RNOI) must be submitted no later than June 30, 2014.

12. On July 25, 2014, Respondent was notified that the Permit had expired on June 30, 2014, and that in order to continue the regulated activity, Respondent must immediately submit a complete RNOI to the Department.

13. The complete RNOI was not received by June 30, 2014. Failure to submit the RNOI by June 30, 2014, is violation of the Act (Ark. Code Ann. § 8-4-101 *et seq.*) and the Clean Water Act (33 U.S.C. § 1251 *et seq.*).

14. On December 11, 2017, ADEQ received a RNOI from Respondent.

15. On January 18, 2018, and January 29, 2018, ADEQ requested payment for the RNOI fee from Respondent via email.

16. On January 29, 2018, Respondent submitted payment for the RNOI fee.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall comply with the existing General Permit until either the coverage date of the new permit coverage or the effective date of the permit termination.

2. In compromise and full settlement of the noncompliance specified in the Findings of Fact, Respondent agrees to pay a reduced civil penalty of THREE THOUSAND DOLLARS

(\$3,000.00) of which TWO THOUSAND DOLLARS (\$2,000.00) may be used for one (1) or more Supplemental Environmental Project(s) (SEP) to be approved by the Director as provided for in Paragraph 3 of the Order and Agreement.

3. As part of the administrative civil penalty as set forth in Paragraph 2 of this Order, Respondent may fund one (1) or more SEP(s) totaling TWO THOUSAND DOLLARS (\$2,000.00) to be approved by the Director. Upon the effective date of this Order, Respondent shall submit the SEP proposal(s). Completion of the SEP(s) shall be due within ninety (90) calendar days from ADEQ's SEP approval letter, unless an extension is granted by the Director. Respondent shall be obliged to pay the difference to ADEQ as a civil penalty if:

- a. Respondent fails to complete the SEP(s) within the approved time frame;
- b. ADEQ discovers or determines that Respondent was required by any federal, state, or local obligation, rule, law, regulation, or statute to perform the SEP(s); or
- c. Expenditures by Respondent in completing the SEP(s) are less than the amount required by the approved SEP(s).

If a SEP(s) is approved, the total amount of the administrative civil penalty of ONE THOUSAND DOLLARS (\$1,000.00) shall be due within thirty (30) calendar days of the approval of the SEP(s). In addition, within thirty (30) calendar days of completion of the SEP(s), Respondent shall submit to ADEQ a SEP Completion Report. The SEP Completion Report shall contain the following information:

- a. A detailed description of the SEP as implemented;
- b. Itemized costs and a copy of the check; and

- c. Certification that the SEP has been fully implemented pursuant to the provisions of this Order.

Should Respondent fail to submit the SEP by the effective date of this Order, Respondent agrees to pay the reduced civil penalty of THREE THOUSAND DOLLARS (\$3,000.00). Penalty payment shall be made payable to ADEQ and mailed to the attention of Fiscal Division, Arkansas Department of Environmental Quality, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317. 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 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 which 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, provided that Respondent requests such an extension in writing and provided that 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. The burden of proving that any delay is caused by circumstances beyond the control of and without the fault of Respondent and the length of the delay attributable to such circumstances shall rest with Respondent. Failure to notify the 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 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 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 set out in this Order. See Exhibit A.

SO ORDERED THIS 24th DAY OF MAY, 2018.

Becky W. Keogh
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

City of Searcy

BY: David Morris
(Signature)

David Morris
(Typed or printed name)

TITLE: Mayor of Searcy AR

DATE: May 17, 2018