



The Choice for Collection System Solutions

February 24, 2017

SENT VIA EMAIL & CERTIFIED MAIL

Mr. Layne Pemberton
Enforcement Analyst – Water Division
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118-5317
501.682.0664

RECEIVED
FEB 24 2017
Kn 4:00

RE: City of Forrest City
NPDES Permit No.: AR0020087, AFIN 62-00070
Response and Counter Offer to Proposed Consent Administrative Order Dated
November 23, 2016

Dear Mr. Pemberton:

The City of Forrest City received a proposed consent administrative order (CAO) on November 23, 2016 via certified mail. A meeting was conducted on January 25, 2017, by staff members of Forrest City Water Utility and the Department. An email request for information was sent on February 7, 2017 for additional information from the Department. An extension was granted on the response via email by the Department revising the response date to February 24, 2017. The Department provided the requested information requested on February 7, 2017, via email on February 8, 2017.

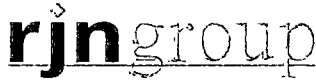
Based upon the aforementioned events the City of Forrest City (Respondent) response and proposed counter offer to the proposed consent administrative order is outlined below.

Item No. 1 – Findings of Fact No. 10, No. 11, No. 16, and No. 17:

The Department affirms sanitary sewer overflows (SSO's) as identified in the Findings of Facts. The Department provided a list of the documented SSO's in the email response of February 8, 2017. The locations identified as the Federal Prison Lift Station Dale Bumpers Rd and the Dawson Road and Turner Avenue Pump Stations are privately owned pump stations. The Respondent was reporting these SSO's under the understood compliance of Part II 7.B., however the responsibility of reporting should be the indirect discharger. As such, the Respondent respectfully request these SSO's be removed from the compliance reports and request the Department contact the indirect discharger directly regarding compliance with 40 CFR Part 403.

Twenty (20) privately owned SSO's were documented for the Federal Prison Lift Station and one (1) SSO was documented for the Dawson Road and Turner Avenue Pump Station, totaling twenty-one (21) SSO's inappropriately designated for the POTW collection system operated by the Respondent.

Respondent request to reduce the total SSO's from forty-three (43) to forty one (41) for the quantity shown in Finding of Fact No. 10 and No. 11. Respondent requests to reduce the total SSO's from twenty seven (27) to eight (8) for Findings of Fact No. 16 and No. 17 to account for SSO's incorrectly identified occurrences at privately owned pump stations.



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Item No. 2 – Findings of Fact No. 14a., 14b., and 14c.:

The Turner Pump Station and the Prison Pump Station are privately owned pump stations and not a part of the POTW collection system. The two remaining pumps at the Mallory Pump Station were operational at the time of inspection. The firm pumping capacity of the Mallory Pump Station was not comprised with one pump out of service.

Based upon the aforementioned discussion on the Findings of Fact for 14a., 14b., and 14c., the Respondent requests the total penalty assessment for these item be vacated providing a (\$1,200) credit to the Total Assessed Penalty since maintenance and operation of the SSO's for the Prison Pump Station and the Turner Pump Station are not related to the POTW collection system, and redundant capacity was available for the Mallory Pump Station.

Item No. 3 – Findings of Fact No. 14d.:

The Department finds that the erosion of the levees of the lagoon could have a direct effect on the environment to result in moderate harm to public health. The Respondent acknowledges that the levees require erosion control maintenance. However, it is important to note and document, that at no time were the levees unstable or risked a breached since the initial inspection to current status. The likelihood of a levee breach from April 17, 2014 to current day is implausible. Further, operating within a freeboard is very typical during wet weather events, and is exactly the intent of a freeboard requirement. The typical operating range of the lagoon maintains 3.0-feet except during excessive wet weather events.

The Respondent will identify and outline the appropriate corrective action measures to mitigate this Finding of Fact that will be presented in the Corrective Action Plan, as required under paragraph 1 of the proposed consent administrative order. Further, the requirements outlined in paragraph 5 of the consent administrative order provide a penal platform should the Respondent not comply with the schedule outlined in the Corrective Action Plan.

Based upon the aforementioned discussion on the Findings of Fact for 14d., the Respondent requests to vacate the total assessed penalty for Finding of Fact No. 14d.

Credit Determination from Proposed Penalty (\$4,800.00)

Item No. 4 - Findings of Fact 14a., 14b., and 14c.:

Respondent requests these finding of fact to be deleted from the proposed CAO based on above position stated above for Item No. 01 and Item 02.

Item No. 7 - Order and Agreement Paragraph 1

The Department has requested a compliance schedule not later than December 31, 2017. The Respondent desires to achieve a cooperative effort to resolve the violations outlined in Findings of Fact for paragraphs 14 and 20.

The Respondent respectfully requests that compliance deadlines be identified in the Corrective Action Plans to account for the fluid nature of large scale projects, rather than placing a firm date in the Order and Agreement. Should an extension be necessary beyond the control of the Respondent, the amendment can be easily accomplished in the Correction Action Plan. A modification of the Order and Agreement requires public notice in accordance with the Department’s regulation causing delay for any adjustment in time. In any respect time constraints should be identified from the date the CAO is executed. The project schedule anticipated as follows based upon constructability and fund availability:

For Items provided in Findings of Fact – Paragraph 14 d.

North Lagoon Erosion Mitigation: December 31, 2017
South Lagoon Erosion Mitigation: December 31, 2018

For Items provided in Findings of Fact – Paragraph 20

Effluent discharge violation mitigation: December 31, 2018

*Note – The Respondent is requesting items in Findings of Fact for Paragraph 14a and 14b be removed per Item No. 04 above.

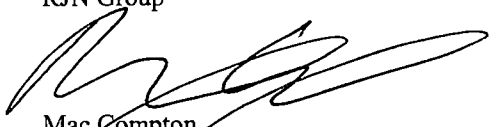
The Respondent respectfully requests the Department to place compliance dates for items in the Findings of Fact Paragraph 14d and Paragraph 20 in the Corrective Action Plan (CAP).

* * * * *

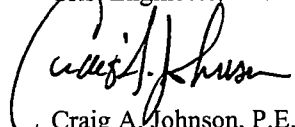
The Respondent respectfully requests these considerations by the Department to provide an amicable and reasonable means to negotiate a successful consent administrative order. We are more than happy to meet with you and staff to further discuss the proposed consent administrative order.

Should you have any questions regarding this correspondence please don’t hesitate to contact me or Craig Johnson at 501.664.1552.

Sincerely,
RJN Group



Mac Compton
Project Manager

Crist Engineers, Inc.

Craig A. Johnson, P.E.
Associate

Enclosures: Proposed Amended Corrected Action Plan

Cc: Calvin Murdock, Forrest City Water

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Forrest City
303 North Rosser
Forrest City, AR 72336

LIS No. 16-
Permit No. AR0020087
AFIN 62-00070

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 Forrest City (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 at 320 SFC 209, Forrest City, St. Francis County, Arkansas.
2. Respondent discharges treated wastewater to an unnamed tributary, thence to the L'Anguille River, thence to the St. Francis River in Segment 5B of the St. Francis 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(a)(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), "Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment."

9. NPDES Permit Number AR0020087 (the Permit) was issued to Respondent on July 26, 2012. The Permit became effective on August 1, 2012, and expires on July 31, 2017.

10. On May 8, 2015, the Department conducted a file review of Sanitary Sewer Overflow (SSO) Reports submitted by the facility in accordance with the Permit for the

period of March 1, 2014 through May 8, 2015. The review revealed that Respondent reported forty-three (4143) SSOs.

11. Each of the forty-three (4143) SSOs constitutes an unpermitted discharge that violates Ark. Code Ann. § 8-4-217(a)(3).

12. On May 11, 2015, the Department sent a letter to Respondent requesting the submission of a Corrective Action Plan (CAP) to address the SSOs.

13. On June 13, 2015, a CAP addressing the SSOs was received from Respondent and subsequently approved by the Department on June 24, 2015.

14. On April 20, 2016, the Department conducted a routine compliance inspection of the facility and Collection System. The inspection revealed the following:

~~a. The Turner Pump Station Wet Well contained heavy amounts of grease, floating solids and debris. This failure violated Part III, Section B, Item 1A of the Permit and therefore Ark. Code Ann. § 8-4-217(a)(3).~~

~~b. The Mallory Pump Station had only one pump that was operational. This violated Part III, Section B, Item 1A of the Permit and therefore Ark. Code Ann. § 8-4-217(a)(3).~~

~~c. The Prison Pump Station Grinder was not operational. This failure violated Part III, Section B, Item 1A of the Permit and therefore Ark. Code Ann. § 8-4-217(a)(3).~~

d.a. _____ A significant amount of erosion was evident on the levees of the North equalization Basin. This condition violated Part III, Section B, Item 1A of the Permit and therefore Ark. Code Ann. § 8-4-217(a)(3). This

violation was previously cited in inspections conducted on April 17, 2014 and August 20, 2014.

15. On May 16, 2016, the Department notified Respondent via letter of the results of the inspection. The inspection was referred to the Enforcement Branch for review.

16. On July 20, 2016, the Department conducted a supplementary file review of Sanitary Sewer Overflow (SSO) Reports submitted by the facility in accordance with the Permit for the period of May 9, 2015 through July 20, 2016. The review revealed that Respondent reported twenty-seven (27) additional SSOs since approval of the CAP.

17. Each of the additional twenty-seven (27) SSOs constitutes an unpermitted discharge that violates Ark. Code Ann. § 8-4-217(a)(3).

18. On June 29, 2016, the Department received a response to the May 16, 2016, inspection report.

19. On November 22, 2016, the Department conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.

20. That review revealed that Respondent reported the following violations of the permitted effluent discharge limits detailed in Part I Section A of the Permit from October 1, 2013 through October 31, 2016.

a. Two (2) violations for Total Suspended Solids;

b. One (1) violation for Fecal Coliform;

c. Two (2) violations for Biological Oxygen Demand, Carbonaceous (5 day, 20C) and;

d. One (1) violation for Ammonia Nitrogen.

21. Each of the six (6) discharge limitation violations listed in Paragraph 20 above constitutes a separate permit violation, for a total of six (6) 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, within thirty (30) calendar days of the effective date of this Order, submit to ADEQ, for review and approval a comprehensive CAP developed by a Professional Engineer (P.E.) licensed in the state of Arkansas. The CAP shall, at minimum, include a reasonable milestone schedule with a date of final compliance, ~~no later than December 31, 2017.~~ The CAP shall detail the methods and best available technologies that will be used to correct the violations listed in Findings of Fact paragraphs 14, 20 and prevent further erosion of the pond levees. Upon review and approval by ADEQ, Respondent shall comply with the terms, milestone schedule and final compliance date contained in the CAP and the approved CAP, milestone schedule and final compliance date shall be fully enforceable as terms of this Order.

2. Within three (3) months of the effective date of this Order, with the overall goal of eliminating capacity and non-capacity related SSOs, the Respondent, shall submit to ADEQ for review and approval a Sewer System Evaluation study (SSES) for its sanitary sewer collection system developed by a P.E. licensed in the State of Arkansas. The SSES should at minimum have the following elements:

- i. Perform smoke testing in all areas of the collection system, beginning with highest priority areas;
- ii. Perform televising of lines in areas deemed necessary based on smoke testing in order to locate leaks and to determine method of repair;
- iii. Develop a plan to address deficiencies through rehabilitation, repair, or replacement;
- iv. Develop a manhole inspection program, beginning in highest priority area; and
- v. Recommend a method of repair and develop a cost estimate for such. Based on the results of the above studies, the Respondent will be able to identify areas requiring improvements and to prioritize those improvements. Short-term and long-term improvements will be considered to remedy deficiencies.

b. The SSES shall include an SSO Plan with a milestone schedule that details the steps the Respondent shall take to fully and expeditiously implement the corrective action. Upon approval by ADEQ, the SSO Plan and milestone schedule shall be incorporated into this Order by reference and shall be followed by the Respondent. Failure to comply with the schedule, as approved by ADEQ, will result in the Respondent being subject to the stipulated penalties contained in Paragraph 5 below.

3. On or before the final compliance dates listed in the SSES, Respondent shall submit a final report to the Department certifying the facility is in compliance with the Permit. This report must be certified by a P.E. licensed in the State of Arkansas.

4. 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 (~~\$2,4008,400.00~~). 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:

Arkansas Department of Environmental Quality
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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

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

13. 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 Eight Thousand Six Hundred Dollars (~~\$2,4008,400.00~~). See Exhibit A.

SO ORDERED THIS _____ DAY OF _____, 2016.

BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

City of Forrest City

BY: _____
(Signature)

(Typed or printed name)

TITLE: _____

DATE: _____