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October 21, 2011

Sent Via Email and U.S. Mail

Ms. Dawn Guthrie
Arkansas Department of Environmental Quality
Legal Division
5301 Northshore Drive
North Little Rock, AR 72118-5317

**RE: City of Marion; Consent Administrative Order
Permit No. AR0021971**

Dear Ms. Guthrie:

On behalf of the City of Marion, and Mayor Frank Fogleman, we greatly appreciate the opportunity to meet with you and several other permit and enforcement staff on October 11, 2011. At the meeting we discussed the draft CAO and other permit renewal issues. As we discussed, the City of Marion would like to propose revisions to the draft CAO. Today I sent to you by email and to this letter I have attached the draft CAO from the City of Marion and a comparison of the changes from the prior draft CAO that the city proposes. Since I did not hear from ADEQ regarding the rescission time frame after response to comments, which is surely not indefinitely, we inserted a proposed 60 day period. Please let me know if you need anything further from the City of Marion or me.

Sincerely,



Albert J. Thomas III

AJT/aob

c: Mayor Frank Fogleman
Alan Anderson, ADEQ

City of Marion

P.O. Box 717
14 MILITARY ROAD
MARION, ARKANSAS 72364
PHONE (870) 739-5410
FAX (870) 739-2102

MAYOR
FRANK A. FOGLEMAN

CITY ATTORNEY
JAMES C. HALE III

MARION DISTRICT JUDGE
J. MICHAEL STEPHENSON

CLERK/TREASURER
DAVID W. RIKARD

ALDERMEN
WARD I
OAKLEA PHILLIPS
RICHARD T. COCKRILL

WARD II
CLIFF WOOD
JIM SPENCE

WARD III
BRYAN JACKSON
SHERRY HOLLIMAN

October 21, 2011

Mr. Alan Anderson
Enforcement Analyst
ADEQ
5301 Northshore Dr.
North Little Rock, AR 72118

RE: Consent Administrative Order; Permit No. AR0021971

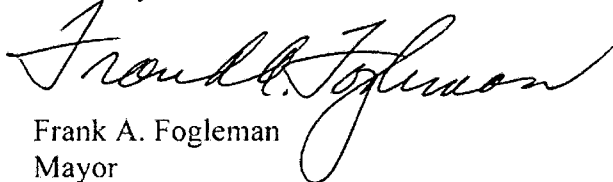
Dear Mr. Anderson:

Please consider this letter and the revised Consent Administrative Order which you are receiving from our attorney as a counter-offer from the City of Marion. The changes proposed in the Consent Administrative Order result from additional time requirements due to the city's having to obtain bids for engineering services. Among other things, the City of Marion requests a reduction in the agreed civil penalty as the city has expended over \$47,000.00 this year alone trying to resolve the issues associated with its wastewater treatment system.

At our meeting on October 11, 2011, we provided you a copy of those costs expended by the city on behalf of its taxpayers. Also, please be mindful that our wastewater treatment system was designed many years ago, prior to much more stringent effluent limitations. We feel it is appropriate to request a reduction in the civil penalty in light of our efforts to resolve the issues related to ammonia nitrogen. You will note that the other exceedences have been resolved with the addition of a de-chlorinator apparatus on our treatment system.

Again, the City of Marion appreciates the opportunity to submit this revised proposed counter-offer for the Consent Administrative Order and we look forward to receiving the ADEQ's response.

Sincerely,


Frank A. Fogleman
Mayor

FAF/gh

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

**City of Marion
P.O. Box 717
Marion, Arkansas 72364**

**LIS No.11-
Permit No. AR0021971
AFIN 18-00110**

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (hereinafter "Order") is issued pursuant to Ark. Code Ann. § 8-1-202(b)(2)(B), which authorizes the Director of the Arkansas Department of Environmental Quality (hereinafter "ADEQ" or "Department") to initiate and settle administrative enforcement actions to compel compliance with laws, orders, and regulations charged to the responsibility of the Department, including, but not limited to, 33 U.S.C § 1311, *et seq.*, Ark. Code Ann. § 8-4-101, *et seq.*, and all regulations issued thereunder. The Director may also propose the assessment of civil penalties as provided by Ark. Code Ann. § 8-4-103(c) and the Arkansas Pollution Control and Ecology Commission Regulation No. 7, Civil Penalties, and take all actions necessary to collect such penalties.

The issues herein having been settled by the agreement of the City of Marion ("hereinafter Permittee") and ADEQ, it is hereby agreed and stipulated that the following **FINDINGS OF FACT** and **ORDER AND AGREEMENT** be entered herein.

FINDINGS OF FACT

1. The Permittee operates a wastewater treatment facility (hereinafter "facility") located in Crittenden County, Arkansas. The facility is a point source for the discharge of pollutants to Waters of the State, and is regulated pursuant to the National Pollutant Discharge Elimination System (hereinafter "NPDES"). NPDES Permit Number AR0021971 (hereinafter "the Permit") was issued by authority of ADEQ to the Permittee.

2. Ark. Code Ann. § 8-4-217(a)(3) states that it shall be unlawful for any person to "[v]iolate any provisions ... of a permit issued under this chapter by the Arkansas Department of Environmental Quality."

3. Ark. Code Ann. § 8-4-103(c)(1)(A) and (B) provide that any person that violates any provision of a permit may be assessed a civil penalty not to exceed ten thousand dollars (\$10,000) per violation and that each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment.

4. A review of the Discharge Monitoring Reports submitted by the Permittee from June 30, 2008 to September 30, 2011, revealed that there has been sixty three (63) violations of the effluent limitations found in Part I, Section A of the Permit. Of the total violations reported, ten (10) were violations of the effluent limitations for Total Suspended Solids, forty-one (41) were violations of the effluent limitations for Ammonia Nitrogen, and twelve (12) were violations of the effluent limitations for Total Residual Chlorine. A list of the effluent limitation violations has been included with this Order as Exhibit 1 and incorporated by reference.

5. Violations of Part I, Sections A of the Permit are therefore violations of Ark. Code Ann. § 8-4-217(a)(3).

6. Warning letters referencing the effluent violations reported on the Permittee's DMRs were sent to the Permittee on 02/14/11, 03/07/11, 04/01/11, 06/01/11, and 07/08/11.

7. A letter dated August 18, 2011 was sent by the Permittee to ADEQ. The letter detailed the steps taken by the Permittee in order to achieve compliance with the effluent limitations of the Permit.

ORDER AND AGREEMENT

Therefore, the parties do hereby stipulate and agree that:

1. Within sixty (60) calendar days of the effective date of this Order, the Permittee shall through a Professional Engineer licensed in the State of Arkansas, develop and submit to ADEQ a comprehensive Corrective Action Plan, with a milestone schedule. The plan shall detail the steps the Permittee shall take to eliminate the effluent limit violations cited in Paragraph 4 of the Findings of Fact. Upon approval by ADEQ, the submitted milestone schedule shall be incorporated into this Order by reference and shall be followed by the Permittee. Failure to comply with the schedule as approved by ADEQ shall subject the Permittee to the stipulated penalties contained in Paragraph 4 below.

2. All submittals required by this Order are subject to approval by ADEQ. In the event of any deficiency, the Permittee shall within thirty (30) calendar days of notification by ADEQ submit any additional information requested. Failure to adequately respond to the notice of deficiency within thirty (30) calendar days

constitutes a failure to meet a deadline and is subject to the stipulated penalties established in Paragraph 4 below. All written submittals required by this Order shall be signed and mailed to the attention of:

Water Division / Enforcement Branch
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118

3. In compromise and full settlement of the civil penalties for violations specified in the Findings of Fact, the Permittee agrees to pay to ADEQ the total sum of One Thousand Dollars (\$1,000.00) as a voluntary civil penalty. Payment of the penalty shall be made within thirty (30) calendar days of the effective date of this Order, made payable to the Arkansas Department of Environmental Quality, and mailed to the attention of:

The Fiscal Division
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, Arkansas 72118

4. Failure to meet any requirement or deadline of this Order constitutes a violation of said Order. If the Permittee should fail to meet any such requirements or deadlines, the Permittee consents and agrees to pay on demand to ADEQ stipulated penalties according to the following schedule:

- | | | |
|----|---|------------------|
| a. | First day through tenth day: | \$100.00 per day |
| b. | Eleventh day through the twentieth day: | \$200.00 per day |
| c. | Twenty-first day through the thirtieth day: | \$300.00 per day |
| d. | Each day beyond the thirtieth day: | \$500.00 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 the Permittee 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 the Permittee with the requirements or deadlines of this Order, the Permittee 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 the Permittee 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 the Permittee. 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 the Permittee and the length of the delay attributable to such circumstances shall rest with the Permittee. Failure to notify the ADEQ promptly, as provided in Paragraph 5 of this Section, shall be grounds for a denial of an extension.

7. This Order is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d) and Arkansas Pollution Control and Ecology Commission 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 for a period of sixty (60) calendar days after responses to public comments. 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.

8. As provided by Arkansas Pollution Control and Ecology Commission 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 the Permittee from any past, present, or future conduct which is not expressly addressed herein, nor does it relieve the Permittee of its responsibilities for obtaining any necessary permits.

10. This Order has been reviewed and approved by the City Council of the City of Marion in a duly convened meeting with a quorum present. It is the intention of the City Council to be bound by the terms appearing in the Order.

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

12. The City Council of the City of Marion 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 One Thousand Dollars (\$1,000.00).

SO ORDERED THIS _____ DAY OF _____, 2011.

TERESA MARKS, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

City of Marion

BY: _____
Frank Fogleman, Mayor

DATE: _____

ATTEST:

BY: _____
David Rikard, Clerk/Treasurer

APPROVED AS TO FORM ONLY;

BY: _____
City Attorney

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

**City of Marion
P.O. Box 717
Marion, Arkansas 72364**

**LIS No.11-
Permit No. AR0021971
AFIN 18-00110**

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5. Violations of Part I, Sections A of the Permit are therefore violations of Ark. Code Ann. § 8-4-217(a)(3).

6. Warning letters referencing the effluent violations reported on the Permittee's DMRs were sent to the Permittee on 02/14/11, 03/07/11, 04/01/11, 06/01/11, and 07/08/11.

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ORDER AND AGREEMENT

Therefore, the parties do hereby stipulate and agree that:

1. Within ~~thirty~~ sixty (60) calendar ~~(30)~~ days of the effective date of this Order, the Permittee shall through a Professional Engineer licensed in the State of Arkansas, develop and submit to ADEQ a comprehensive Corrective Action Plan, with a milestone schedule. The plan shall detail the steps the Permittee shall take to eliminate the effluent limit violations cited in Paragraph 4 of the Findings of Fact. Upon approval by ADEQ, the submitted milestone schedule shall be incorporated into this Order by reference and shall be followed by the Permittee. Failure to comply with the schedule as approved by ADEQ shall subject the Permittee to the stipulated penalties contained in Paragraph ~~5~~4 below.

2. All submittals required by this Order are subject to approval by ADEQ. In the event of any deficiency, the Permittee shall within ~~fifteen (15)~~ thirty (30) calendar days of notification by ADEQ submit any additional information requested. Failure to adequately respond to the notice of deficiency within ~~fifteen (15)~~ thirty (30) calendar days

constitutes a failure to meet a deadline and is subject to the stipulated penalties established in Paragraph 4 below. All written submittals required by this Order shall be signed and mailed to the attention of:

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including but not limited to the payment of a civil penalty in the amount of **Five**One Thousand Dollars (**\$**51,000.00).

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TERESA MARKS, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

City of Marion

BY: _____
Frank Fogleman, Mayor

DATE: _____

ATTEST:

BY: _____
David Rikard, Clerk/Treasurer

APPROVED AS TO FORM ONLY;

BY: _____
City Attorney



TILLEY & THOMAS

ATTORNEYS AT LAW

407 West Searcy Street
Heber Springs, AR 72543

Ms. Dawn Guthrie
Arkansas Department of Environmental Quality
Legal Division
5301 Northshore Drive
North Little Rock, AR 72118-5317