

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

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

**LIS No.12- 035
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 seventy (70) 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 six (46) were violations of the effluent limitations for Ammonia Nitrogen, twelve (12) were violations of the effluent limitations for Total Residual Chlorine, and two (2) were violations for Fecal Coliform. 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 Two Thousand Five Hundred Dollars (\$2,500.00) 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. 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 Two Thousand Five Hundred Dollars (\$2,500.00).

SO ORDERED THIS 9th DAY OF Feb., 2012.

Teresa Marks

TERESA MARKS, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

City of Marion

BY: Frank R. Fogleman
Frank Fogleman, Mayor

DATE: 1-31-12

ATTEST:

BY: David Rikard
David Rikard, Clerk/Treasurer

APPROVED AS TO FORM ONLY;

BY: [Signature]
City Attorney