

# ADEQ

ARKANSAS  
Department of Environmental Quality

## Memorandum

TO: Teresa Marks, Director *TM*

THROUGH: Ryan Benefield, Deputy Director *RB*

THROUGH: Tammy Harrelson, Chief of the Legal Division *TH*

THROUGH: Dawn Guthrie, ADEQ Attorney *DG*

THROUGH: Steven Drown, Chief of the Water Division *SD*

THROUGH: Mo Shafii, Assistant Chief of the Water Division *MS*

THROUGH: Craig Uyeda, Enforcement Branch Manager *CU*

THROUGH: Sam Sawyer, Enforcement Coordinator, Water Division

FROM: Alan Anderson, Enforcement Analyst, Water Division *AA*

SUBJECT: City of Marion Settlement Offer and Revised CAO

DATE: November 10, 2011

On September 9, 2011, a proposed CAO for the City of Marion was approved by the Director. The Order was drafted in response to the Permittee's failure to comply with the effluent limits established in the Permit. On September 14, 2011, the approved CAO was forwarded to the Honorable Frank Fogleman of the City of Marion.

On October 21, 2011, the City of Marion submitted a counter offer in the form of a cover letter and markup version of the approved CAO. The counter offer submitted by the city is attached.

The City of Marion is requesting the following changes to the approved CAO for which the Water Division Enforcement Branch has no objection:

### Findings of Fact Section

- Paragraph 4- An extension of the DMR review period from June 30, 2011 to September 30, 2011. This change, along with effluent violation data from the May 2011 DMR which was submitted late, will increase the overall total effluent violations from 62 to 70.

### Order and Agreement Section

- Paragraph 1- An increase in the time requirement to hire a Professional Engineer and submit a Corrective Action Plan from 30 calendar days to 60 calendar days.

- Paragraph 2- An increase in the time requirement to respond to any notice of deficiency from 15 calendar days to 30 calendar days.

Additionally, the City of Marion has proposed the following changes to the Order and Agreement Section of the approved CAO for which the Water Division Enforcement Branch does not concur:

- Paragraph 3- An 80% decrease in the proposed civil penalty from \$5,000.00 to \$1,000.00. The city justifies this request by informing ADEQ that over \$47,000 has been spent in 2011 in order to “resolve the issues associated with its wastewater treatment system”, and has previously provided ADEQ with copies of invoices which confirms that the city has incurred substantial expenditures in order to correct the conditions in the wastewater treatment facility that cause the effluent violations.

However, it is the position of the ADEQ Water Division Enforcement Branch that while the city’s efforts to correct the problems associated with the treatment system warrant a reduction in the proposed civil penalty, an 80% reduction is not reasonable. The ADEQ Water Division Enforcement Branch proposes a 50% reduction in the proposed civil penalty from \$5,000.00 to \$2,500.00, and has included this dollar amount in the revised draft CAO.

- Paragraph 7- A 60 calendar day limit to ADEQ’s right to rescind the Order based on comments received within the 30 day public comment period. This proposal has been rejected by the Water Division Enforcement Branch and has not been included in the revised draft CAO.