

El Dorado Water Utilities

500 NORTH WASHINGTON · P.O. BOX 1587 · EL DORADO, AR 71731 (870) 862-6451

November 19, 2012

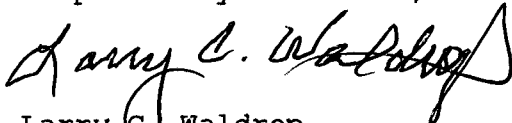
Michelle Bolenbaugh
Enforcement Analyst
ADEQ Water Division

RE: NPDES Permit No. AR0033723
CAO

Dear Ms. Bolenbaugh,

I am writing in response to the CAO that was issued recently in regards to discharge permit violations at the El Dorado South Plant. This issue is centered mainly around ammonia limit violations due to spikes that occasionally occur in our lagoon system and some bio-monitoring issues. As you may know, we have been working diligently for many years on a discharge pipeline to the Ouachita River which has met many legal challenges. The assimilative capacity of the river has allowed for higher discharge limits for the pipeline permit (AR0049743) which should eliminate any future ammonia violations. In regards to the bio-monitoring issues, the critical dilution requirements are changing from the current 100% to 5.5% in the river permit. I have included a copy of the construction Agreement for this project which was signed on July 9, 2012. This project is on schedule and has a substantial completion date of July 9, 2013. Please note the substantial penalties (\$5000/day) for failure to meet this completion date. Because of our current efforts to eliminate any future violations, I request that the proposed penalty be reduced to a maximum of \$1000. Please note that I am not aware of El Dorado Water Utilities being required to pay any monetary penalty in the past. Records will reflect that we have worked closely with ADEQ for the past several years in an attempt to complete this project. We are extremely encouraged by the fact that construction is finally underway. Please give careful consideration to this request due the current financial burden we are facing due to pipeline construction cost.

Respectfully submitted,



Larry C. Waldrop
General Manager

ADEQ

ARKANSAS
Department of Environmental Quality

November 14, 2012

CERTIFIED MAIL: 91 7199 9991 7030 4905 8567

Larry Waldrop
El Dorado Sewer Improvement District
South Plant
P.O. Box 1587
El Dorado, AR 71731

**RE: NPDES Permit No. AR0033723, AFIN 70-00341
Proposed Consent Administrative Order (CAO)**

Dear Mr. Waldrop:

The Department has reviewed your counter proposal to the Consent Administrative Order that was sent to you on September 13, 2012. The Department has decided to accept your proposal and reduce the voluntary civil penalty to **One Thousand Dollars (\$1,000.00)**.

The enclosed CAO describes the alleged violations of your facility in the Findings of Fact section of the document and outlines the steps you must take to achieve compliance in the Order and Agreement section. The proposed civil penalty is our final offer to settle the violations outlined in the CAO.

If, after careful review and consultation you wish to accept the terms of the CAO, please sign, date and return it by **November 28, 2012**. It will then be signed by our Director and you will be provided with a final copy along with information about the effective date and the public notice process.

Failure to contact us by the above date will constitute rejection of our settlement offer and we will proceed with unilateral enforcement through a Notice of Violation.

Thank you for your attention to this matter. If you wish to discuss this matter further please call me at (501)682-0667 or you may e-mail me at bolenbaughm@adeq.state.ar.us.

Sincerely,



Michelle Bolenbaugh
Enforcement Analyst
Water Division - Enforcement Branch

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

El Dorado Sewer Improvement District
South Plant
P.O. Box 1587
El Dorado, AR 71731

LIS No. 12-
Permit No. AR0033723
AFIN 70-00341

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (hereinafter "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 (hereinafter "APC&EC").

The issues herein having been settled by the agreement of the El Dorado Sewer Improvement District (hereinafter "Respondent") and the Arkansas Department of Environmental Quality (hereinafter "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 wastewater treatment plant (hereinafter "facility") located in Union County, Arkansas.
2. The facility is regulated pursuant to the National Pollutant Discharge Elimination System (hereinafter "NPDES").

El Dorado Sewer Improvement District



3. NPDES Permit Number AR0033723 (hereinafter "Permit") was issued to the Respondent on August 31, 2008, pursuant to the authority granted to ADEQ by Ark. Code Ann. § 8-4-203. The Permit became effective on October 7, 2008, and expires on September 30, 2013.

4. 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].

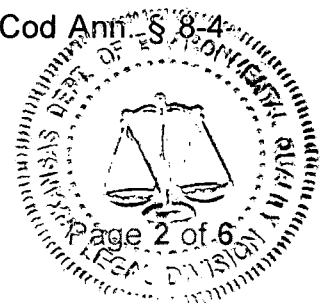
5. Ark. Code Ann. § 8-4-103 authorizes ADEQ to assess an administrative civil penalty not to exceed ten thousand dollars (\$10,000) per violation for any violation of any provision of the Act and any regulation or permit issued pursuant to the Act.

6. 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."

7. From September 1, 2011 through April 30, 2012, the Respondent reported twelve (12) exceedances of the effluent discharge limitations found in Part 1, Section A of the Permit as indicated on the Discharge Monitoring Reports submitted by the Respondent. Of the total violations reported, eight (8) were Total Ammonia Nitrogen and four (4) were Whole effluent toxicity.

8. The Respondent's failure to maintain compliance with the Permit's effluent discharge limitations violated Part 1, Section A of the Permit and Ark. Cod Ann. § 8-4-217(a)(3).

El Dorado Sewer Improvement District



ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. The Respondent shall immediately comply with all final permitted effluent limitations.
2. In the event that compliance cannot be achieved, the Respondent shall submit to the ADEQ within sixty (60) days of the receipt of this Order, a critical path analysis of when compliance will be achieved. This analysis shall include descriptions of the best available technology needed to achieve compliance, the estimated cost of the technology, and a fixed date schedule of when compliance will be achieved.
3. In compromise and full settlement of the civil penalties for violations specified in the Findings of Fact, the Respondent agrees to pay to ADEQ within thirty (30) calendar days of the effective date of this Order the total sum of One Thousand Dollars (\$1,000.00) as a voluntary civil penalty. 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

4. Failure to meet any requirement or deadline of this Order constitutes a violation of said Order. If the 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. Days one through fourteen: | \$100.00 per day |
| b. Days fifteen through thirty: | \$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

EI Dorado Sewer Improvement District

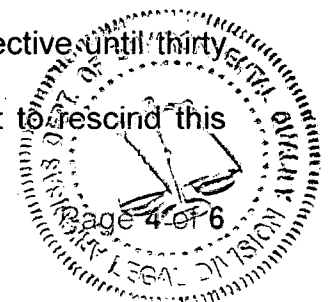


remedies or sanctions which may be available to ADEQ by reason of failure by the Respondent to comply with the requirements of this Order.

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 the Respondent with the requirements or deadlines of this Order, the 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 the 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 the 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 the Respondent and the length of the delay attributable to such circumstances shall rest with the 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. 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.

8. 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 Respondent from any past, present, or future conduct which is not expressly addressed herein, nor does it relieve the Respondent of its responsibilities for obtaining any necessary permits.

9. The undersigned representative of the Respondent certifies that he or she is a Commissioner of the Respondent and thus authorized to execute this CAO and to legally bind the Respondent to its terms and conditions. Execution of this CAO by an individual other than a Commissioner of Respondent shall be accompanied by a resolution granting signature authority to said individual as duly ratified by the governing body of the entity.

SO ORDERED THIS _____ DAY OF _____, 2012.

TERESA MARKS, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

El Dorado Sewer Improvement District



El Dorado Sewer Improvement District

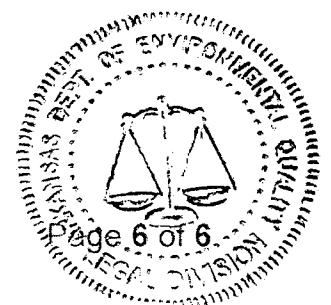
BY: *Larry C. Waldrop*
(Signature)

LARRY C. WALDROP
(Typed or printed name)

TITLE: GENERAL MANAGER

DATE: 11-19-12

El Dorado Sewer Improvement District



DOCUMENT 00520

AGREEMENT

THIS AGREEMENT is dated as of the ⁹~~10~~th day of July in the year 2012, by and between the El Dorado Water Utilities Commission (hereinafter called OWNER) and S & J Construction Company, Inc., (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1 WORK

CONTRACTOR shall commence and complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:
Ouachita River Joint Pipeline.

Article 2 ENGINEER

The Project has been designed by GBMc & Associates, who is hereinafter called ENGINEER and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

Article 3 CONTRACT TIME

- 3.1 The Contractor shall commence the Work required by the Contract Documents on or before a date to be specified in the Notice to Proceed and substantially completed as specified in the Bid Form. Substantial completion in accordance with the General Conditions and these Specifications shall be within 365 days, or extended time limit agreed upon, from the date when the Contract Time commences to run. Final payment in accordance with the General Conditions and these Specifications shall be within 425 days, or extended time limit agreed upon, from the date when the Contract time commences to run.

3.2 Liquidated Damages.

OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with the General Conditions. They also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not completed on time.

Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER five thousand dollars (\$ 5,000.00) for each day that expires after the time specified in paragraph 3.1 for Substantial Completion until the

Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER five hundred dollars (\$ 500.00) for each day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment.

Article 4 CONTRACT PRICE

The CONTRACTOR agrees to perform all of the WORK described in the CONTRACT DOCUMENTS and comply with the terms stated therein for the sum of nine million two hundred and thirty-three thousand eight hundred and forty-four dollars and ninety-eight cents (\$ 9,233,844.98), based on unit prices as shown in the Bid Schedule.

Article 5 PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

5.1 Progress Payments

OWNER shall make progress payments of the Contract Prices on the basis of CONTRACTOR'S Applications for Payment as recommended by ENGINEER during construction as provided below. All progress payments will be on the basis of the progress of Unit Price Work based on the number of units completed.

One Hundred (100) percent of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to OWNER as provided in General Conditions) shall be included in the progress payments.

5.2 Final Payment

Upon final completion and acceptance of the Work in accordance with the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by the ENGINEER as provided in the General Conditions.

Article 6 Not Used.

Article 7 CONTRACTOR'S REPRESENTATIONS.

In order to induce OWNER to enter into this Agreement, CONTRACTOR makes the following representations:

7.1 CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, Work, site locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.

- 7.2 CONTRACTOR has studied (or assumes responsibility for obtaining and carefully studying) all such physical conditions at or contiguous to the site or otherwise that may affect the cost, progress, performance or furnishing of the Work as CONTRACTOR considered necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies, or similar information or data are or will be required by CONTRACTOR for such purposes.
- 7.3 CONTRACTOR has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies, or similar information or data in respect of said Underground Facilities are or will be required by CONTRACTOR in order to perform and furnish the Work at the Contract Price, within the Contract Time, and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of the General Conditions.
- 7.4 CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

Article 8 CONTRACT DOCUMENTS

The term "CONTRACT DOCUMENTS" means and includes the following:

- 8.1 Advertisement for BIDS
- 8.2 Information for BIDDERS
- 8.3 BID
- 8.4 BID BOND
- 8.5 Non-collusion Affidavit
- 8.6 Agreement
- 8.7 General Conditions
- 8.8 SUPPLEMENTARY CONDITONS
- 8.9 Payment BOND
- 8.10 Performance BOND
- 8.11 Warranty BOND
- 8.12 Certificate of Owner's Attorney
- 8.13 Prevailing Wage Rates
- 8.14 NOTICE of AWARD
- 8.15 NOTICE to PROCEED
- ~~8.12 CHANGE ORDER #1, dated June 22, 2012~~ *omitted see*
- 8.13 DRAWINGS prepared by GBMc & Associates and dated May 1, 2012
- 8.14 SPECIFICATIONS prepared or issued by GBMc & ASSOCIATES, dated May 1, 2012.
- 8.15 ADDENDA: No. 1, dated May 22, 2012

Article 9 MISCELLANEOUS

- 9.1 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 9.2 Upon final completion of Work, the CONTRACTOR shall provide the OWNER with an executed WARRANTY BOND for one-half (50%) of the final project cost, valid for two (2) years after the date of Final Acceptance.
- 9.3 OWNER and CONTRACTOR each binds itself, its partners, successors, assigns, and legal representatives in respect of all covenants, agreements, and obligations contained in the Contract Documents.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in (3) copies, each of which shall be deemed an original on the date first above written.

OWNER:

El Dorado Water Utilities

By Larry Waldrop 7/10/12
(Signature) (Date)

Name Larry Waldrop
(Please Type)

Title General Manager

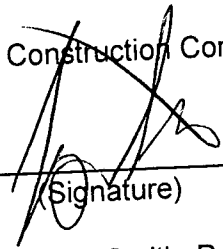
ATTEST: Phyllis Waller

Name Phyllis Waller
(Please Type)

Title Administrative Assistant

CONTRACTOR:

S & J Construction Company, Inc.

By  (Signature) (Date)

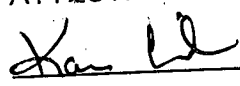
Name: Jerry Smith, President
(Please Type)

Address: 1014 S Redmond Road
Jacksonville, AR 72076-5121

Employer Identification
Number 71-0637506

(SEAL)

ATTEST:



Name Karen Linder
(Please Type)

END OF AGREEMENT

El Dorado Water Utilities
P. O. Box 1587
El Dorado, AR 71731-1587

CERTIFIED MAIL™

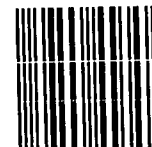


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Michele Bolenbaugh
ADEQ
Water Enforcement Div
5301 North Shore Dr
N. Little Rock, AR 72118-5317

