



# CITY OF HOT SPRINGS

Utilities Department  
780 Adams Street  
Hot Springs, Arkansas 71901

October 25, 2017

Mr. Richard Healey  
ADEQ Branch Manager  
5301 Northshore Drive  
North Little Rock, Arkansas 72118 - 5317

**RE: NPDES Permit Number AR0033880, AFIN 26-00145  
PROPOSED CONSENT ADMINISTRATIVE ORDER**

Dear Mr. Healey

The City of Hot Springs acknowledges receipt of the enclosed proposed Consent Administrative Order. I do apologize for the inconvenience and our misunderstandings. As I understand it, the CAO is based on the following:

- August 3, 2017 - ADEQ received, what we considered, our complete renewal application
- August 4, 2017 – Deadline for receipt of the complete renewal applicaiton
- August 10, 2017 – The City of Hot Springs received a request to update the form
  - Improper Responsible Official signatures and initials
  - Failure to submit Total Kjeldahl Nitrogen, Nitrate plus Nitrite Nitrogen, Oil and Grease, and Total Dissolved Solids
- August 23, 2017 - ADEQ received our updated application
- August 28, 2017 - ADEQ deemed the permit renewal application administratively complete

I acknowledge that the Responsible Official signatory and initialings were incorrect on the permit application and that the four laboratory test results were not included. We do not test for those items. We contracted a private lab to run the test. I am informed that the four tests are not included on our permit. As a result, those items were assumed to be 'not applicable' along with many other items that are not part of our permit but listed within the entire application form.

I would like to request additional clarification about the difference between the terms 'complete' and 'administratively complete'. Part III, Section D, Condition 10 indicates that the complete permit renewal application must be submitted at least 180 days prior to the expiration date of the Permit. Section D, Condition 10 does not reference administratively complete, just complete. As I noted, we assumed that we submitted the complete renewal

form. I would point out that, with the exception of the four lab tests, all of the pertinent and technically required information was complete and correct.

Mr. James Sorrells, Wastewater Facilities Operations Manager, has completed these permit applications in the past and, as in the past, signed as both Cognizant Official and Responsible Official. In this case, he either forgot or was unaware that the Responsible Official signatory had been reassigned to me. Certainly, there was no negligent intent. We are suitably embarrassed and do apologize for the inconvenience. However, a CAO does seem a severe disciplinary action for an innocent oversight.

I do not believe that the City of Hot Springs should be held in any essential violation of the permit and request that you reconsider the proposed CAO. I am aware that the permit authorizes Director Keogh to accept the completed permit renewal application at any point prior to the expiration of the permit. I am asking that you reevaluate the basis for a CAO related to this corrected error. In the future we will make every attempt to submit documents early enough to accommodate any corrections that may be required.

Cordially,

A handwritten signature in blue ink that reads "Monty Ledbetter". The signature is written in a cursive, flowing style.

Monty Ledbetter  
Utilities Director

Cc: Leslie Allen-Daniel, ADEQ Enforcement Analyst, Office of Water Quality  
James Sorrells, Wastewater Facilities Operations Manager



ARKANSAS  
Department of Environmental Quality

October 10, 2017

CERTIFIED MAIL: 9489 0090 0027 6022 2446 64

Monty Ledbetter, Utilities Director  
City of Hot Springs  
P.O. Box 700  
Hot Springs, AR 71902

**RE: NPDES Permit Number AR0033880, AFIN 26-00145  
PROPOSED CONSENT ADMINISTRATIVE ORDER**

Dear Mr. Ledbetter:

Attached is a proposed Consent Administrative Order (CAO) for violations of the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-201 *et seq.*, at a site located at 320 Davidson Drive, Hot Springs, Arkansas. The Arkansas Department of Environmental Quality (ADEQ) has determined that this CAO is necessary to ensure compliance with the Act.

The enclosed CAO enumerates the violation in the "Findings of Fact" section, and outlines the steps required to achieve compliance in the "Order and Agreement" section of the CAO. Additionally, a civil penalty in the amount of \$1,000.00 is proposed by ADEQ to settle the violation outlined in this CAO. If you choose to accept the terms of the CAO, please sign, date, and **return the original, embossed copy** to the address below **within 30 days**. Subsequently, the Director of ADEQ will sign the CAO and you will be provided a copy, including information on the public notice process and the effective date of the CAO.

In addition, you may have the option of directing a portion of your penalty toward a Supplemental Environmental Project (SEP) to advance environmental interests. Generally a SEP will not reduce the recommended administrative civil penalty by more than thirty-five percent (35%); however, the ADEQ Director has the final authority to establish the level of mitigation of a penalty. If you are interested in a SEP as part of your negotiated settlement, please refer to ADEQ's SEP Policy and Proposal Guidelines at <http://www.state.ar.us/legal/sep.htm> for additional information.

Failure to contact the ADEQ Water Division Enforcement Branch in response to this CAO within **twenty (20) calendar days** of receipt of this letter will constitute rejection of the settlement offer and unilateral enforcement action may proceed through a Notice of Violation (NOV). Should you wish to discuss this matter further, or schedule a meeting, you may contact me at (501) 682-0630, or you may e-mail [allen-daniel@adeq.state.ar.us](mailto:allen-daniel@adeq.state.ar.us).

Sincerely,

Leslie Allen-Daniel, Enforcement Analyst  
Office of Water Quality, Enforcement Branch

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Hot Springs  
P.O. Box 700  
Hot Springs, AR 71902

LIS No. 17-  
Permit No. AR0033880  
AFIN 26-00145

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (“Order”) is issued pursuant to the authority of the Arkansas Water and Air Pollution Control Act (“the 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 Hot Springs (“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 wastewater treatment plant (“Facility”) located at 320 Davidson Drive, Hot Springs, Garland County, Arkansas.
2. Respondent discharges treated wastewater to Lake Catherine, an impoundment of the Ouachita River Segment 2F of the Ouachita 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 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(c)(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), “[e]ach day of a continuing violation may be deemed a separate violation for purposes of penalty assessment.”

9. NPDES Permit Number AR0033880 (“Permit”) was issued to Respondent on January 13, 2013. The Permit became effective on February 1, 2013 and will expire on January 31, 2018.

10. Part III, Section D, Condition 10 of the Permit requires Respondent to submit a complete permit renewal application at least 180 days prior to the expiration date of the Permit if the activity regulated by the Permit is to continue after the expiration date.

11. Respondent intends to operate this facility beyond the expiration date of the current permit, January 31, 2018.

12. On February 3, 2017 and May 5, 2017, Respondent was notified their Permit would expire on January 31, 2018, and in order to continue the regulated activity, a complete renewal application must be submitted no later than August 4, 2017.

13. On August 3, 2017, Respondent submitted a Permit renewal application that required additional information, which ADEQ requested and received on August 23, 2017. The Permit application was deemed administratively complete on August 28, 2017.

14. The complete Permit renewal application was not received by August 4, 2017. Failure to submit the Permit renewal application by August 4, 2017, is a violation of Part III, Section D, Condition 10 of the Permit and therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

#### **ORDER AND AGREEMENT**

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall comply with the existing Permit until either the effective date of the permit renewal or the effective date of the permit termination.

2. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of One Thousand Dollars (\$1,000.00.) 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.

3. 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.

4. 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.

5. 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.

6. 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.

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 10<sup>th</sup> or 25<sup>th</sup> 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 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.

9. 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 \_\_.

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

11. 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 One Thousand Dollars (\$1,000.00). See Exhibit \_\_.

SO ORDERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2017.

\_\_\_\_\_  
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

City of Hot Springs

BY: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed or printed name)

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_