



ARKANSAS
Department of Environmental Quality

November 4, 2010

David Jurgens, P.E., Utilities Department Director
City of Fayetteville
113 West Mountain
Fayetteville, Arkansas 72701

RE: Sanitary Sewer Overflow Complaint Investigation

Dear Mr. Jurgens:

On August 17, 2010, I performed a complaint investigation/reconnaissance inspection concerning an overflow from a manhole located off Highway 16 near Elkins Pump Station #1. Follow-up reconnaissance inspections were conducted on August 20 and August 24, 2010. These investigations were conducted in accordance with the provisions of the Federal Clean Water Act, the Arkansas Water and Air Pollution Control Act, and the regulations promulgated thereunder. The investigation revealed the following violation:

Placement of waste in such a manner that it has the potential to enter the waters of the State. This is in violation of the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. §8-4-217(a)(2). During the investigation, raw sewage was observed in the road ditch and solids associated with the manhole overflow had not been removed and properly disposed. According to David Turner, Elkins Water and Wastewater Superintendent, the sanitary sewer overflow occurred on August 16, 2010, and resulted in the release of 2000 gallons of sewage.

It is my understanding that because you are the permittee holder, you will need to report all sanitary sewer overflows from your satellite systems. According to the Department's records, this sanitary sewer overflow has not been reported. Please notify the Department.

In addition, it has been recommended that you establish a Memorandum of Agreement with the City of Elkins. This agreement should outline reporting requirements and enforcement if the satellite system fails to notify you of a sanitary sewer overflow.

The above item requires your immediate attention. Please submit a written response to these findings to Cindy Garner, Water Division Enforcement Branch Manager. This response should be mailed to the address listed below. This response should contain documentation describing the course of action planned to address the items noted. This corrective action should be completed as soon as possible, and the written response is due by November 14, 2010.

For additional information you may contact the Enforcement Branch by telephone at 501-682-0639 or by fax at 501-682-0910.

Mr. Jurgens, City of Fayetteville
November 4, 2010
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If I can be any assistance, please contact me at 479-267-0811, ext. 12.

Sincerely,

A handwritten signature in black ink that reads "Jay Alison West". The signature is written in a cursive style with a large, looped initial "J".

Alison West
District 1 Field Inspector
Water Division

cc: David Turner, Water & Sewer Superintendent
City of Elkins
1874 Stokenbury Road
Elkins, Arkansas 72727

Water Division Enforcement Branch
Water Division Permits Branch



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

NPDES Compliance Inspection Report

Form Approved
OMB No. 2040-0003

Section A: National Data System Coding

Transaction Code	NPDES	Yr/Mo/Day	Inspec. Type	Inspector	Fac. Type	
1 <input type="text" value="N"/> 2 <input type="text" value="5"/> 3 <input type="text" value="A"/> <input type="text" value="R"/> <input type="text" value="0"/> <input type="text" value="0"/> <input type="text" value="2"/> <input type="text" value="0"/> <input type="text" value="0"/> <input type="text" value="1"/> <input type="text" value="0"/> 11 12 <input type="text" value="1"/> <input type="text" value="0"/> <input type="text" value="0"/> <input type="text" value="8"/> <input type="text" value="1"/> <input type="text" value="7"/> 17 18 <input type="text" value="R"/> 19 <input type="text" value="S"/> 20 <input type="text" value="1"/>	Remarks					
Inspection Work Days		Facility Evaluation Rating		BI QA -----Reserved-----		
67 <input type="text"/> <input type="text"/> <input type="text"/> 69		70 <input type="text" value="N"/>		71 <input type="text" value="N"/> 72 <input type="text" value="N"/> 73 <input type="text"/> <input type="text"/> <input type="text"/> 74 75 <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> 80		

Section B: Facility Data

Name and Location of Facility Inspected (<i>For industrial users discharging to POTW, also include POTW name and NPDES permit number</i>) Elkins Water & Sewer Department (discharges to City of Fayetteville POTW) 1874 Stokenbury Road Elkins, Arkansas 72727 479-643-3131 / 479-879-5869 (cell) / 479-643-3368	Entry Time/Date 1:50 p.m./ 8-17-2010	Permit Effective Date June 1, 2006
Name(s) of On-Site Representative(s)/Title(s)/Phone and Fax Number(s) Jack Ladyman/Mayor of Elkins/479-643-3131	Other Facility Data	
Name, Address of Responsible Official/Title/Phone and Fax Number David Jurgens, P.E., Utilities Department Director City of Fayetteville 113 W. Mountain Fayetteville, AR 72701	Contacted Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	

Section C: Areas Evaluated During Inspection

(S = Satisfactory, M = Marginal, U = Unsatisfactory, N = Not Evaluated)

N	Permit	N	Flow Measurement	N	Operations & Maintenance	N	Sampling
N	Records/Reports	N	Self-Monitoring Program	N	Sludge Handling/Disposal	N	Pollution Prevention
N	Facility Site Review	N	Compliance Schedules	N	Pretreatment	N	Multimedia
N	Effluent/Receiving Waters	N	Laboratory	N	Storm Water	U	Other: SSO from satellite system

Section D: Summary of Findings/Comments (Attach additional sheets if necessary)

The City of Elkins has a waste collection system that discharges untreated sewage/waste to the City of Fayetteville POTW and is responsible for the operation and maintenance of the collection system. On August 17, 2010, I received a complaint concerning an overflow from a collection system manhole at Pump Station #1. On August 17, 2010, I spoke with Honorable Ladyman in regards to the sanitary sewer overflow complaint. Honorable Ladyman stated that a relay was stuck and there was no control voltage. There was no power to the 110 power circuit. Thus, the alarm and dial up did not work. The City of Elkins had spread lime in the area of the manhole. I informed Honorable Ladyman the area around the manhole and the waste in the road ditch needed to be properly cleaned up and disposed, the sanitary sewer overflow needed to be reported to the Department and the City of Fayetteville, and I would need a sanitary sewer overflow report. According to David Turner's report, a sanitary sewer overflow was discovered on August 16, 2010. According to Mr. Turner, the control panel did not have any electric due to wires pulled and disconnected. Mr. Turner estimated the volume of the overflow to be 2000 gallons. The following violation was noted at the time of the inspection:

Placement of waste that is likely to cause pollution to the waters of the State.

Name(s) and Signature(s) of Inspector(s) <i>Alison West</i> Alison West/	Agency/Office/Telephone/Fax AR Dept. of Environmental Quality-Fayetteville 479-267-0811, ext. 12; 479-267-0819 (fax)	Date October 29, 2010
Signature of Reviewer	Agency/Office/Phone and Fax Numbers	Date

Water Division NPDES Photographic Evidence Sheet

Location:	Elkins Waste Collection System SSO Location –Manhole located at Pump Station #1
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Photographer:	Alison West	Witness:	N/A
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Photo #	1	Of	10	Date:	08/17/10	Time:	1:55 p.m.
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Description:	IMGP5322. Solids had not been removed around manhole. The manhole is located at Pump Station #1 near Highway 16.
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Photographer:	Alison West	Witness:	N/A
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Photo #	2	Of	10	Date:	08/17/10	Time:	1:56 p.m.
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Description:	IMGP5323. Solids had not been removed in the area near the manhole.
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Water Division NPDES Photographic Evidence Sheet

Location: Elkins Waste Collection System SSO Location –Manhole located at Pump Station #1

Photographer: Alison West **Witness:** N/A

Photo # 3 **Of** 10 **Date:** 08/17/10 **Time:** 1:56 p.m.

Description: IMG5325. Solids had not been removed around the manhole and properly limed.



Photographer: Alison West **Witness:** N/A

Photo # 4 **Of** 10 **Date:** 08/17/10 **Time:** 1:56 p.m.

Description: IMG5326. Solids had not been removed near the manhole and properly limed.



Water Division NPDES Photographic Evidence Sheet

Location: Elkins Waste Collection System SSO Location –Manhole located at Pump Station #1

Photographer: Alison West **Witness:** N/A

Photo # 5 **Of** 10 **Date:** 08/17/10 **Time:** 1:57 p.m.

Description: IMG5328. Raw sewage in the road ditch from manhole overflow at Pump Station #1.



Photographer: Alison West **Witness:** N/A

Photo # 6 **Of** 10 **Date:** 08/17/10 **Time:** 1:59 p.m.

Description: IMG5329. Raw sewage in road ditch.



Water Division NPDES Photographic Evidence Sheet

Location: Elkins Waste Collection System SSO Location –Manhole located at Pump Station #1

Photographer: Alison West **Witness:** N/A

Photo # 7 **Of** 10 **Date:** 08/20/10 **Time:** 1:13 p.m.

Description: IMGP5343. Solids had not been removed from around the manhole.



Photographer: Alison West **Witness:** N/A

Photo # 8 **Of** 10 **Date:** 08/20/10 **Time:** 1:13 p.m.

Description: IMGP5342. Raw sewage in road ditch.



Water Division NPDES Photographic Evidence Sheet

Location:	Elkins Waste Collection System SSO Location –Manhole located at Pump Station #1						
Photographer:	Alison West			Witness:	John Fazio		
Photo #	9	Of	10	Date:	08/24/10	Time:	2:55 p.m.
Description:	IMGP5398. Solids have been removed from the impacted area.						



Photographer:	Alison West			Witness:	John Fazio		
Photo #	10	Of	10	Date:	8/24/2010	Time:	2:55 p.m.
Description:	IMGP5397. Sewage has been removed from the road ditch.						



November 22, 2010

Cindy Garner
ADEQ – Water Division, Enforcement Branch
5301 North Shore Drive
North Little Rock, AR 72118-5317

RE: Sanitary Sewer Overflow Complaint Investigation- Elkins

Dear Ms. Garner,

Satellite wastewater systems such as the one owned and operated by the City of Elkins are a significant challenge across the country. As these systems are not issued an NPDES permit, traditional enforcement methods are generally not available to organizations such as the Environmental Protection Agency and the Department of Environmental Quality. When I was serving with the Sanitary Sewer Overflow Federal Advisory Committee from 1995 – 1999, satellite systems were recognized as a significant challenge for both the regulatory community and the POTW who provides the wastewater treatment services.

As the City of Elkins is a sovereign municipality, Fayetteville has limited or no legal authority over what takes place within Elkins. We do not have knowledge of what occurs within its system. Elkins wastewater enters the Fayetteville collection system at a manhole into which the Elkins owned force main discharges. This is where Fayetteville assumes responsibility. Fayetteville treats Elkins' wastewater under provisions of the contract for services that exists between the two cities. The contract, as amended, is attached.

Section B 1. A. of our NPDES Permit states “The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit.” Elkins wastewater facilities are neither installed nor used by the City of Fayetteville. They are the sole property of the City of Elkins; they are a POTW within their own right.

It is impossible for Fayetteville to state, as required on the DMR, *“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”* Neither the City of Elkins nor its employees are “under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted.” Nor does Fayetteville have any authority over the operations, maintenance, capital improvements, expansions, management, budgeting, funding approval, rate setting, or any other aspects of the Elkins wastewater collection system. Thus, it is impossible for Fayetteville’s Cognizant or Ranking Officials to report violations that may or may not occur within Elkins’ jurisdiction.

The solution adopted in many states and EPA regions is for a no-discharge NPDES permit to be issued by the permitting authority (in this case, ADEQ) to municipalities which own, operate, and maintain a wastewater

collection system. These cities are then held to the Clean Water Act standards for operations of their wastewater systems that do not currently have a discharge permit. Because there is no treatment, these permits, and the subsequent reporting requirements, are much simpler than with a normal discharge permit. The best reference is the 2007 Draft - EPA Model NPDES Permit Language for Sanitary Sewer Overflows, at the link below. It states in (1)(A), "The permittee shall report to the Director any overflow that may endanger health or the environment from a sanitary sewer or any unauthorized overflow from a combined sewer over which the permittee has ownership or operational control." Note that Fayetteville has neither "ownership or operational control" of the Elkins system. EPA has addressed satellite systems in a separate clause on page 5, (2)(C)(iv), "Control flows from municipal satellite collection systems." This indicates Fayetteville needs to control Elkins flows to our system, but not their SSOs. This document can be found at http://www.epa.gov/npdespub/pubs/sso_model_permit_conditions.pdf. A Consent Administrative Order issued by ADEQ to Russellville in November 2009 requiring a CMOM program, contains parts of the model language and similar language. Although it does not address reporting SSOs in the CMOM section starting at page 11 of 19, the CAO states "Permittee owns or over which it retains operational control," repeatedly. The CAO also includes the clause, "Address flows from municipal satellite collection systems." This language is entirely consistent with the EPA Model NPDES Permit Language for SSOs, reinforcing that Fayetteville needs to regulate Elkins flows to our system, but recognizing we cannot control their SSOs as we do not have ownership or operational control over their system. Fayetteville responsibility begins at the point where the Elkins flow enters the Fayetteville collection system. A similar situation exists if a truck delivering septic tank waste to our facility has a spill on a county road on the way to the WWTF, there would never be any consideration of the City of Fayetteville being required to report the spill. The vehicle owner, like Elkins, owns their wastewater delivery system (be it a vehicle or a collection system) and delivers their waste to our system.

None of this is to say that we do not communicate and support Elkins in many ways. Upon request and availability of personnel and equipment, Fayetteville provides technical and field assistance to Elkins on a time and materials reimbursable basis in case of emergency or specific need. We have never refused such a request. I met for several hours with Mayor Ladyman and the Elkins Sewer Committee (one City Council member and three citizens appointed by the Mayor) at an evening public meeting on August 26, 2010 to discuss water and wastewater issues. Further examples of cooperative efforts include Fayetteville's application for and receipt of a \$500,000 EPA State Tribal and Assistance Grant to replace and increase the capacity of the Elkins Outfall Line, the 10" gravity sewer line in Fayetteville's collection system that carries predominantly Elkins wastewater from the end of its force main to Fayetteville's transmission mains. Additionally, Elkins is involved in professional selections for the Fayetteville water and wastewater rate setting process, and the two cities worked together on impact fee development. None of this cooperative effort, however, gives Fayetteville any control or other than slight and indirect influence in Elkins wastewater operations and decisions.

In my August meeting with Elkins Mayor and Sewer Committee, there were discussions of vandalism (speculation of intentional slashing of Elkins' backhoe tires, and the possibility of vandalism at their largest sewer pump station) that may have impacted its ability to conduct wastewater operations. I do not know the status of any investigations into these incidents since they are internal Elkins issues. There have also been several incidences wherein the meter by which Fayetteville bills Elkins has been rendered inoperable or the power has been turned off. Although this meter is on Elkins' City property, it is the only portion of Elkins sewer system to which Fayetteville has unrestricted access. Given the circumstances, it would place both Fayetteville and Elkins in unacceptable circumstances for Fayetteville employees to have unrestricted access to any other components of the Elkins system.

Fayetteville is deeply committed to protecting the environment, as demonstrated over the last 25 years by its incredible financial commitment and success in eliminating sanitary sewer overflows, significantly increasing

capacity, rigorous compliance to our NPDES permit requirements in all ways, and in many actions outside the wastewater arena. Because of the limitations of Elkins being a sovereign city and the limited nature of the Elkins-Fayetteville sewer treatment services agreement, Fayetteville can only offer to **informally** notify ADEQ staff if and when Fayetteville becomes aware of a potential violation of the Clean Water Act in the Elkins system. We can neither make a formal notification nor take corrective action, because Fayetteville's staff does not know any of the specifics of the Elkins system except for the meter referred to above. Nor does Fayetteville have the lawful authority to take action. As a concerned citizen, however, we can make an **informal** notification.

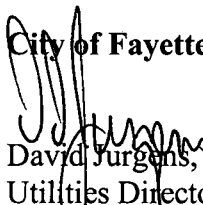
Because Fayetteville operates and maintains, under contract, the wastewater collection systems for Farmington, Greenland, and southern Johnson, these challenges do not exist in these cities. Within the area served by Fayetteville wastewater treatment plants, only the Elkins circumstance creates this satellite system dilemma. The Fayetteville City Council several years ago rejected the request by Elkins that Fayetteville "take over" the Elkins wastewater system. That is a significant political issue, and circumstances in Elkins have been such that it was not deemed to be in the best interests of Fayetteville's citizens that Fayetteville accept that added burden.

I hope that this letter helps clarify the circumstances relating to the Elkins – Fayetteville relationship. I sincerely recommend that ADEQ pursue issuing simple no-discharge NPDES permits for satellite systems. There are certainly a number of these within the State, and this mechanism is a very effective means to address this difficult issue state wide.

Please don't hesitate to contact me at 479-575-8330 or djurgens@ci.fayetteville.ar.us.

Sincerely,

City of Fayetteville



David Jurgens, P.E.
Utilities Director

Enclosures

Cc: City of Elkins, attn. Mayor Bruce Ledford
Eric Flemming, ADEQ
Alison West, ADEQ
William Winn, Fayetteville Water/Sewer Operations
Duyen Tran, Fayetteville Wastewater Treatment

SEWER CONTRACT

This Agreement, made and entered into this 20th day of December 2005, by and between the City of Fayetteville, Arkansas, hereinafter referred to as "Fayetteville", and the City of Elkins, Arkansas, hereinafter referred to as "Elkins";

WITNESSETH:

WHEREAS, Fayetteville in its governmental capacity own and operates its own complete wastewater collection, treatment and discharge system; and

WHEREAS, Elkins in its governmental capacity owns and operates its own wastewater collection system and does not operate a wastewater treatment or discharge system; and

WHEREAS, Fayetteville receives wastewater from Elkins and then transports and processes the wastewater in Fayetteville's wastewater treatment facility and discharged treated wastewater effluent under Fayetteville's National Pollution Discharge Elimination System (NPDES) permit; and

WHEREAS, at this time it has been determined that the best and most feasible treatment for Elkins' wastewater can be provided by Fayetteville's wastewater treatment facilities; and

WHEREAS, Elkins desires to contract with Fayetteville to provide continued transportation and treatment for the wastewater from Elkins; and

WHEREAS, Fayetteville must ensure that this role does not place financial burden of Fayetteville's retail customers for which Fayetteville's retail customers receive no benefit; and

WHEREAS, Elkins must ensure that this role does not place financial burdens on Elkins' retail customers for which Elkins' retail customers receive no benefit; and

WHEREAS, Elkins acknowledges that Fayetteville must add and fund capacity additions from time-to-time.

NOW THEREFORE, in consideration of the mutual covenants, promises and conditions hereinafter set forth and other valuable considerations, the receipt of which is hereby acknowledged by Fayetteville and Elkins, it is hereby agreed as follows:

A. TREATMENT OF SEWAGE

1. Fayetteville agrees to accept for treatment the sanitary sewage delivered by Elkins to the Fayetteville system and to process such wastes in the same manner as wastes from Fayetteville are treated under the following terms and conditions:
2. Elkins will construct all facilities required to deliver wastewater from Elkins to a "Point of Connection" to Fayetteville's sewer collection system as described below and as Elkins' wastewater is discharged to the environment under Fayetteville's NPDES permit or permits, as well as any other regulatory requirements that apply as a result of said permit or permits. This applies to any and all permits that pertain to any portion of the wastewater conveyance and treatment system through which Elkins wastewater flows. Fayetteville will provide Elkins a current copy of the NPDES permit and any future revisions. Permits which are issued relative to portions of the Fayetteville wastewater conveyance and treatment system through which Elkins wastewater does not flow do not apply.
3. Fayetteville and Elkins agree that Fayetteville shall accept and treat all wastewater flows from Elkins until the bio-loading at the Paul Noland Plant ("Plant") and the hydraulic loading at any point in the collection system from the Point of Connection to and including the "Plant" reaches 75%, and, at that time the Elkins and Fayetteville agree to pro-rate the remaining capacity between all cities and any non-city customers using the "Plant" based on the existing percentage of that "Plant" by each city or non-city customer until additional capacity is provided. Fayetteville will provide Elkins with the average monthly bio-loading for the Noland plant for all of 2005. Going forward, Fayetteville will provide monthly reports to Elkins showing the average bio-loading for each month.

B. RATES FOR SEWER SERVICE

1. Elkins and Fayetteville agree that rate-making shall be fair and equitable, be easy to administer and understand and shall be based on policies that result predictable rate adjustments and avoid abrupt rate changes.
2. Elkins agrees that Fayetteville's return on investment on assets employed to provide service to Elkins will be limited to 2% above the average bond coupon outstanding debt at the time of the comprehensive cost of service study noted in paragraph 5 below.
3. Elkins and Fayetteville agree the rate for sewage treatment services provided herein shall be reduced to \$2.81 per 1,000 gallons of sewage received by Fayetteville from Elkins for treatment beginning on the date this agreement is approved by both Cities. The Cities acknowledge this rate reduction is partially due to the Elkins sewer meter registering faulty volumes.

4. Fayetteville and Elkins agree to apply and accept a retroactive adjustment reducing the 2005 rate of \$5.71/1,000 gallons to \$2.81/1,000 gallons based on actual metered volumes, back to March 1, 2005. Both cities acknowledge this is a settlement that resolved all potential claims and released any rights they might have had prior to March 1, 2005 relating to sewer rates, metering, etc. Fayetteville agrees to release its rights for all back billings for volume underreporting that has occurred prior to the effective date of this agreement.
5. Fayetteville will conduct a comprehensive cost-of-service study in the future that will reset these sewer rates based on industry standards. Fayetteville shall cause the rate per 1,000 gallons for wastewater treatment services to be determined by an independent utility rate consulting firm with demonstrable expertise in water and wastewater utilities under a wholesale contractual agreement and in compliance with the rate methodology based in part or whole on the rate making standards promulgated by the American Water Works Association (AWWA), Water Environment Federation (WEF) or other authoritative organization. All of the wastewater flows from Elkins shall flow through a metering device provided at the pump station which pumps to the point of connection of the Elkins system to the Fayetteville system.

C. IMPACT FEE IMPLEMENTATION or CONTRACTURAL SURCHARGE

1. Elkins and Fayetteville further agree that Elkins shall pay an additional \$0.25/1,000 gallons of billed sewage, beginning January 1, 2006, to fund Elkins' portion of future capacity enhancements to the Fayetteville collection and treatment facilities utilized by Elkins. Fayetteville and Elkins agree that this rate per thousand shall be evaluated concurrent with each comprehensive cost-of-service study described in Section B paragraph 5 above as governed by Section H below. Fayetteville and Elkins further agree that Elkins shall assess, collect and remit to Fayetteville the cost of increasing capacity for the sewer lines necessary to serve Elkins as depicted in APPENDIX A and described in Section I. The capacity cost is to be calculated on the volume of contributed wastewater flow caused by the development under review.
2. Fayetteville agrees to fund a wastewater impact fee feasibility analysis in compliance with the Arkansas Development Impact Fees Act. Elkins and Fayetteville agree that this contract may be amended to incorporate wastewater impact fees at the conclusion of the applicable studies required by the Arkansas Development Impact Fees Act.
3. The payment for wastewater treatment shall be based on metered water purchases discounted by the formula described in APPENDIX B. Elkins and Fayetteville agree to use eighty-five per cent (85%) as the initial percentage. This initial

percentage shall remain in effect until December 31, 2006 at which time the percentage may be adjusted to reflect adjusted wastewater flows as calculated by a registered engineer contracted by Elkins. Elkins and Fayetteville agree that the volume of wastewater received by Fayetteville at the "Point of Connection" shall be measured by the wastewater meter installed. The Cities agree to base monthly billing on the percentage method unless the metering device readings detect any volume discrepancies greater than 10% for three consecutive months. Elkins and Fayetteville agree to use actual meter readings while the volume discrepancies are investigated. The use of the meter for billing purposes shall cease only upon mutual agreement between Elkins and Fayetteville.

4. Fayetteville shall provide the maintenance and any required replacement of the metering device, and Elkins shall be the right of inspection of the metering device and "Point of Connection" at any reasonable time. Elkins shall have full and complete access to the pump station at all times. The metering device shall be calibrated in compliance with the manufacturer's guidelines for accuracy once per year by Fayetteville.
5. A statement for sewer services shall be rendered by Fayetteville once each month, and shall be paid by Elkins in accordance with Fayetteville Code of Ordinances Chapter 51.141, as amended from time-to-time and incorporated herein as of September 14, 2005:

Sewer Billing procedure (A) Bills for sewer service shall be rendered monthly. Sewer bills are due and payable on or before the 20th day following the billing date stated on the sewer bills. Sewer bills not paid on or before the due date shall be considered delinquent and an additional charge of 10% of the total bill shall be added, and if any bill is not paid within 30 days after the bill shall be due, suit may be brought to collect the amount due, together with the expenses of collection and a reasonable attorney's fee. (B) In the case of the sewer customers outside the city limits, if the monthly service charges are not paid within the prescribed time, sewer service to the customer will be discontinued in the same manner and subject to the same provisions as prescribed for discontinuance of service under 51.140(B).

D. ELKINS RESPONSIBILITY FOR SEWER MAINTENANCE

1. Elkins shall have full responsibility for all maintenance and operations of Elkins' sanitary sewer system, including all parts thereof necessary to deliver the sanitary waste to the point of connection with the Fayetteville system in such a manner to be suitable for the treatment capabilities of the Fayetteville system. In such regard, Elkins agrees to comply with all reasonable requirements of Fayetteville.
2. Elkins agrees that Fayetteville will have the right to inspect the sanitary sewage system of Elkins at all reasonable times so as to assure Fayetteville that the construction, maintenance and operation of said sanitary sewer system in being

carried out in a manner consistent with modern engineering and health practices. Fayetteville may inspect any taps onto the sanitary sewer system of Elkins at the time of installation of said taps, said inspection to be by a designated official of Fayetteville. Fayetteville will notify the Elkins Water and Sewer Department during normal business hours, of Fayetteville's intent to inspect portions of Elkins Wastewater Collection System. Fayetteville agrees to provide Elkins a copy of any written reports that result from the inspection(s).

E. ELKINS' ADOPTION OF SEWER CODE REQUIREMENTS

1. Elkins agrees to adopt and enforce with reference to all users of its sanitary sewer system requirements and restrictions which are, at least, as restrictive as those provisions of the ordinances of Fayetteville restricting and controlling discharges into the sanitary sewer system of the City of Fayetteville. The requirement of this subparagraph shall be interpreted as to require the adoption and enforcement of such restrictions by Elkins as are equal to any ordinances or subsequent amendments to such ordinances of Fayetteville.
2. Elkins hereby agrees to exclude from their sewage collection system any industrial process wastewater without prior written approval from Fayetteville. Elkins agrees to provide Fayetteville an official copy of the Elkins adopted guidelines.

F. REPORTING DEVELOPMENT APPROVALS

1. Elkins agrees to provide to Fayetteville, on an annual basis, all development approvals grants by the Elkins Planning Commission and/or Elkins City Council.

G. TERM OF CONTRACT

1. The term of this contract shall be for the life of loan #9206 whose original date is July 23, 1981, with the loan having an initial term of forty (40) years, from Farmers Home Administration to the City of Elkins, which is being made to enable Elkins to build its sewage facilities.

H. SEWER RATE SCHEDULE ADJUSTMENT

1. The rate schedule established herein is subject to adjustment by Fayetteville every two (2) years during this contract upon thirty (30) days written notice to Elkins that Fayetteville intends to conduct a comprehensive rate study.
2. Fayetteville agrees that Elkins may participate in the selection of the independent rate consultant

I. POINT OF CONNECTION

1. The "Point of Connection" shall be at the end of Fayetteville's 10-inch gravity sewer line in Lewis Woods Lane in the Baldwin Community as depicted in APPENDIX A.

J. HOLD HARMLESS

1. Elkins covenants and agrees that it will defend and hold harmless against and indemnify said City of Fayetteville, Arkansas, for any judgment which might be obtained against them by reason of any negligent act on the part of Elkins in the operations, maintenance and construction of Elkins' sewage collection facilities within Elkins' service area. This provision does not waive either City's statutory sovereign immunity. Fayetteville shall not be responsible for damages resulting from acts of God, acts of war, insurrections, or rebellions, acts of public enemy, acts of any unauthorized persons, firms, or corporations, or acts of Elkins', its agents or employees.

K. CONTRACT BINDING ON SUCCESSORS

1. This contract shall be binding upon the parties hereto, their successors and assigns. In the event of any occurrence rendering Elkins incapable of performing under this contract, any successor of Elkins, whether by result of legal process, assignment, or otherwise shall succeed to the rights of Elkins under this contract.

L. NO FRANCHISE OR OTHER FEE OR TAX TO BE LEVIED

1. Elkins will not during the period of this contract or any renewal thereof, levy any franchise tax, occupation tax, or any other tax or fee of any form whatsoever, by whatever name it may be called, upon Fayetteville, or the services rendered by Fayetteville pursuant to this contract without consent of all the parties.

M. TERMINATION

1. This agreement may be terminated by either party upon a material or substantial breach by the other of any of the covenants or agreements contained herein, and the failure of the party in breach to remedy such breach within six (6) months after receipt of written notice of the existence of such breach. Either party will have the right to utilize a mediation process if they disagree with a proposed breach. Elkins reserves the right to re-negotiate or terminate this contract if it is advantageous for the Elkins to pursue a different type of sewage treatment process, subject to advance notification of at least two years.

N. NOTICES

1. The written notices provided for herein shall be sufficient if sent by certified mail, return receipt requested, postage prepaid, to the Mayor of the City of Fayetteville, 113 West Mountain Street, Fayetteville, Arkansas, 72701, or the Mayor of the City of Elkins, 348B North Center Street, Elkins, Arkansas, 72727, but not limited thereto.

IN AGREEMENT WITH ALL THE TERMS AND CONDITIONS ABOVE AND IN WITNESS WHEREOF, The Mayor and City Clerk of the City of Fayetteville, Arkansas, by authority of a Resolution adopted by the City Council of the City of Fayetteville, and the Mayor and City Recorder of the City of Elkins, Arkansas, by authority of a Resolution adopted by the City Council of the City of Elkins, have hereunto set their hand and caused the corporation seal to be affixed and dated this 20th day of December 2005.

CITY OF FAYETTEVILLE

By:

Dan Coody
DAN COODY

Mayor of Fayetteville, AR

Attest:

Sondra Smith
Sondra Smith, City Clerk

CITY OF ELKINS

By:

Jack Ladyman
JACK LADYMAN

Mayor of Elkins, AR

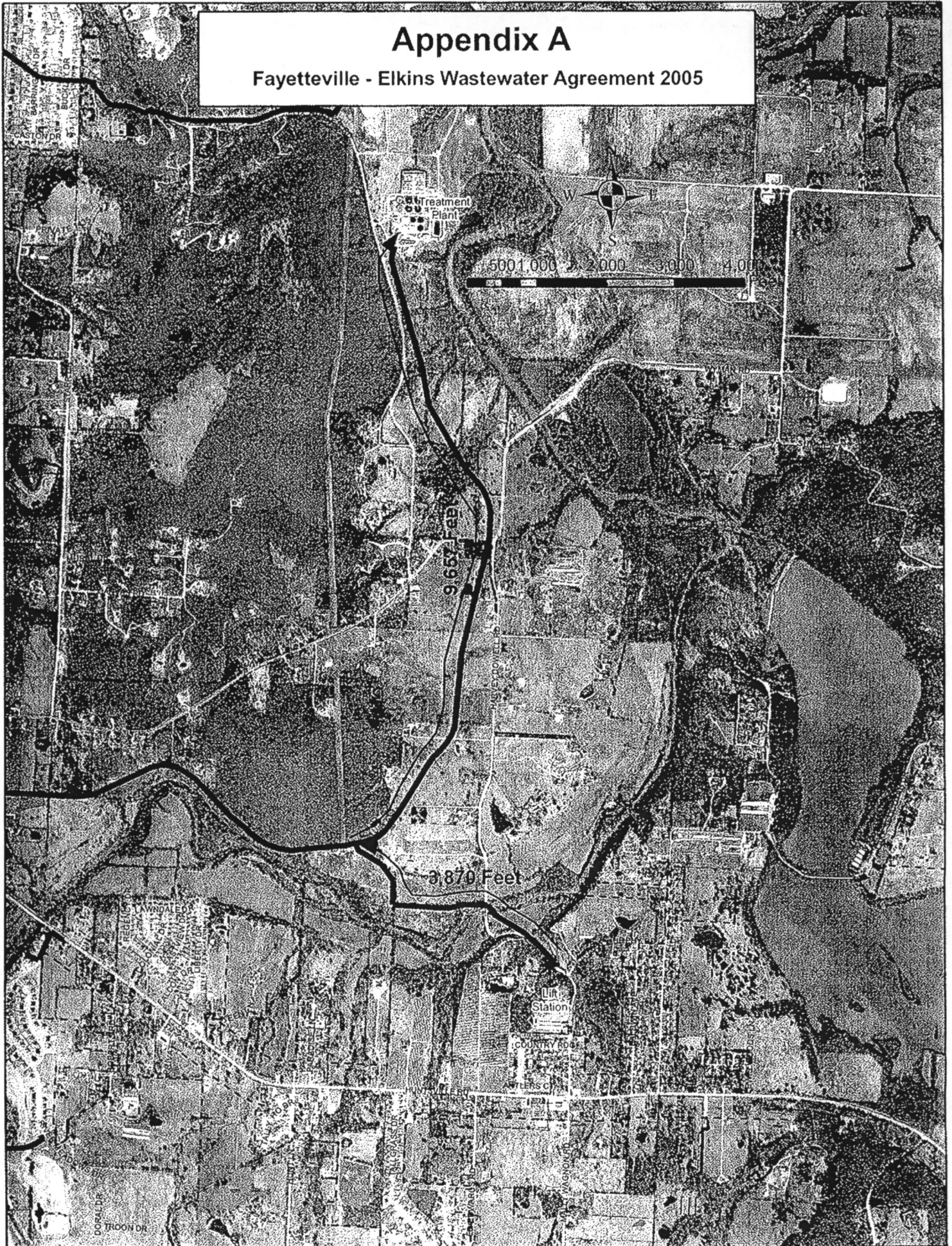
Attest:

Meg Smith
Meg Smith, Recorder



Appendix A

Fayetteville - Elkins Wastewater Agreement 2005



Fayetteville - Elkins Wastewater Agreement

APPENDIX B

Wastewater Volume Based On Metered Water

FORMULA ACTIONS

Water Meter Reading Volume - September, 2005

Example

4,431,900

Wastewater Volume as a % of Water 85%

3,767,115

AMENDMENT 1 TO SEWER CONTRACT

The Sewer Contract (hereinafter "Contract") dated December 20, 2005 between the City of Fayetteville (hereinafter "Fayetteville") and City of Elkins (hereinafter "Elkins") shall be amended and modified by this amendment (hereinafter "Amendment") as follows:

WHEREAS:

Under the Contract, Fayetteville receives wastewater from Elkins and then transports and processes the wastewater in Fayetteville's wastewater treatment facility and discharges treated wastewater effluent under Fayetteville's National Pollution Discharge Elimination System permit; and

Fayetteville must ensure that this role does not place financial burdens on Fayetteville's retail customers for which Fayetteville's retail customers receive no benefit; and

Elkins must ensure that this role does not place financial burdens on Elkins' retail customers for which Elkins' retail customers receive no benefit; and

City of Fayetteville and City of Elkins desire to amend said Contract.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, Fayetteville and Elkins do hereby agree to amend the Contract as follows:

The Contract and the terms and conditions therein shall remain unchanged except for the sections listed below:

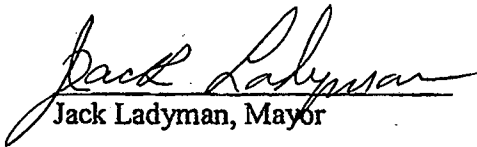
Section C. IMPACT FEE IMPLEMENTATION or CONTRACTUAL SURCHARGE subparagraph 3 is removed in its entirety and replaced with the following:

3. The payment for wastewater treatment shall be based on metered water purchased discounted by the formula described in APPENDIX B. Elkins and Fayetteville agree to use eighty-five percent (85%) as the initial percentage. Elkins and Fayetteville agree that the volume of wastewater received by Fayetteville at the "Point of Connection" shall be measured by the wastewater meter installed. The Cities agree to base monthly billing on the percentage method. Volumes of wastewater below or above the agreed upon percentage (85%), as measured by the wastewater meter, shall be recorded on a monthly basis, with a reconciliation of the net difference to occur semiannually in June and December. If the reconciliation volume is over the agreed upon percentage, this amount shall be billed to Elkins in June and December at the actual computed cost of wastewater collection to and treatment at the Noland Wastewater Treatment Plant, not including the calculated rate of return and not

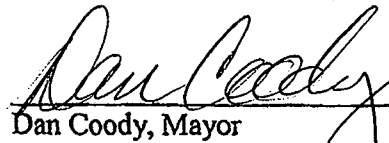
including depreciation charges, but including any capacity surcharge, based on the most recent rate as determined in paragraph B. of this Contract. If the reconciliation volume is below the agreed upon percentage, the actual amount billed for the difference shall be refunded to Elkins in June and December. For 2007, the only reconciliation shall take place in December, 2007 and shall be calculated based on the rate in place as of December 1, 2007. Late penalties shall not be computed on any amount overage accumulated prior to the reconciliation bill.

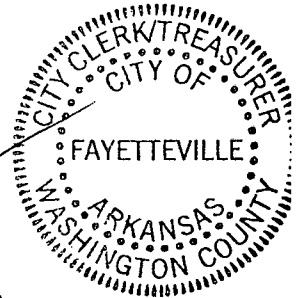
IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the 23rd day of January, 2008.

CITY OF ELKINS



Jack Ladyman, Mayor

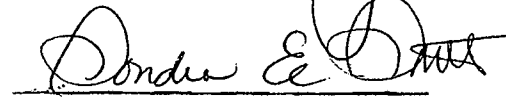
CITY OF FAYETTEVILLE


Dan Coody, Mayor



ATTEST:


GAYLA STAHMAN, CITY OFFICE MANAGER


Sondra Smith, City Clerk

City of Fayetteville
113 West Mountain St.
Fayetteville, AR 72701

720 721 721145 **A1-1**

PRSR FIRST-CLASS MAIL
US POSTAGE PAID
Fayetteville, AR
PERMIT# 1



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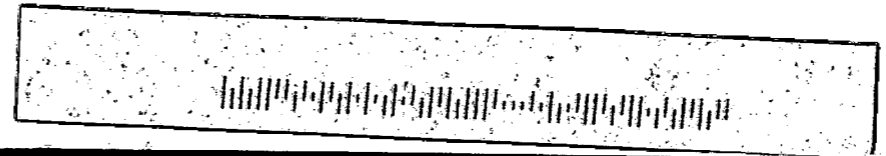
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RETURN SERVICE REQUESTED

72118



Cindy Garner
ADEQ-Water Division
Enforcement Branch
5301 North Shore Dr.
North Little Rock, AR
72118-5317



ADEQ

ARKANSAS
Department of Environmental Quality

December 14, 2010

David Jurgens, P.E., Utilities Department Director
City of Fayetteville
113 West Mountain
Fayetteville, Arkansas 72701

RE: Sanitary Sewer Overflow Complaint Investigation

Dear Mr. Jurgens:

This letter is to confirm the receipt of the letter dated November 22, 2010, concerning the sanitary sewer overflow complaint investigation in the City of Elkins. The Department appreciates your timely response and valuable input. We have sent the inspection report to Elkins also. At this time, we are currently considering all remedies.

If we need further information concerning this matter, we will contact you. Thank you for your attention to this matter. Should you have any questions, feel free to contact me at 501-682-0640 or you may e-mail me at garner@adeq.state.ar.us.

Sincerely,



Cindy Garner
Enforcement Branch Manager
Water Division Enforcement Branch