

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Alma
811 Fayetteville Avenue, Suite A
Alma, AR 72921

LIS No. ~~17~~ 18-002
Permit No. AR0021466
AFIN 17-00059

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (“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 (APC&EC).

The issues herein having been settled by the agreement of the City of Alma (“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 2500 Orrick Road, Alma, Crawford County, Arkansas.
2. Respondent discharges treated wastewater to the Arkansas River in Segment 3H of the Arkansas 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 (“the 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) provide:

(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 AR0021466 (“Permit”) was issued to the Respondent on April 25, 2013. The Permit became effective on May 1, 2013, and expires on April 30, 2018.

10. On February 23, 2016, the Department notified Respondent of the permitted effluent limit violations and requested that a Corrective Action Plan (CAP) be submitted to the Department by March 15, 2016.

11. On March 11, 2016, Respondent submitted a letter that stated the facility had achieved compliance with permitted effluent limits. Respondent did not submit a CAP as requested by the Department.

12. On June 12, 2017, the Department notified Respondent of the continued violations of the permitted effluent limits, and requested that Respondent submit a CAP to the Department by July 25, 2017.

13. On July 14, 2017, Respondent submitted a CAP, and stated that the facility shall achieve compliance with the permitted effluent limits and submit a final report to the Department by July 30, 2018.

14. On July 19, 2017, the Department notified Respondent that the CAP was approved and requested progress reports detailing the work completed towards achieving compliance with permitted effluent limits. The first progress report is due to the Department by November 30, 2017.

15. On October 13, 2017, the Department conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit. The review revealed that Respondent reported the following violations of the permitted effluent discharge limits detailed in Part I Section A of the Permit from August 1, 2013, through September 30, 2017:

- a. Fourteen (14) violations for Biochemical Oxygen Demand and
- b. Six (6) violations for Total Suspended Solids.

Each of the twenty (20) discharge limitation violations listed above constitutes a separate permit violation for a total of twenty (20) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

16. On October 16, 2017, Respondent met with the Department to discuss the permitted effluent limit violations and the CAP.

17. On October 16, 2017, the Department issued a proposed CAO to Respondent.

18. On November 6, 2017, Respondent requested to amend the expected date of compliance in the CAP to December 31, 2018.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall operate the existing treatment system in such a manner as to comply with all permitted effluent limits to the maximum extent practicable, including implementing Best Management Practices.

2. Respondent shall follow the July 14, 2017 CAP, as amended by the November 6, 2017 request, and submit to the Department quarterly progress reports detailing the work completed to correct the permitted effluent limit violations cited in Findings of Fact Paragraph 15. The CAP, milestone schedule, and final compliance date of December 31, 2018, shall be fully enforceable as the terms of this Order. The first report shall be due within three (3) months of the effective date of this Order.

3. Respondent shall achieve compliance with the Permit and submit a final compliance report, certifying compliance with permitted effluent limits, to the Department by December 31, 2018.

4. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a reduced 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:

ADEQ, 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.

5. 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.

6. If any event, including but not limited to an act of nature, occurs that 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.

7. ADEQ may grant an extension of any provision of this Order if Respondent requests such an extension in writing, and 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. Respondent has the burden of proving that any delay is caused by circumstances beyond the control and without the fault of Respondent, as well as the length of the delay attributable to such circumstances. Failure to notify ADEQ promptly, as provided in the preceding paragraph of this Section, shall be grounds for a denial of an extension.

8. 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.

9. 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.

10. 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.

11. 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 A.

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

13. 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 the civil penalty set forth in this Order. See Exhibit A.

SO ORDERED THIS 4th DAY OF January, 2017⁸.

Becky W. Keogh
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

City of Alma

BY: Keith Greene
(Signature)

KEITH GREENE
(Typed or printed name)

TITLE: MAYOR

DATE: 12/21/2017

CITY OF ALMA, ARKANSAS

RESOLUTION NO. 2017-15

A RESOLUTION CONSENTING TO THE ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY (ADEQ) CONSENT ADMINISTRATIVE ORDER (CAO) AND AUTHORIZING THE MAYOR AND CLERK TO SIGN THE CAO ON BEHALF OF THE CITY OF ALMA, CRAWFORD COUNTY, ARKANSAS.

WHEREAS, the City of Alma operates a wastewater treatment plant (facility) located at 2500 Orrick Rd, Alma, Crawford County, Arkansas; and

WHEREAS, the facility is regulated pursuant to the National Discharge Elimination System (NPDES); and

WHEREAS, the 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; and


WHEREAS, the on several occasions, from August 1, 2013 through September 30, 2017, the facility violated the permitted effluent discharge limits; and

WHEREAS, the ADEQ has determined to initiate enforcement action and has issued a proposed CAO to the City.

NOW, THEREFORE, BE IT RESOLVED that The City Council of Alma, Arkansas consents to the established schedule of specified actions to bring the City's municipal waste treatment plant into compliance with applicable permit requirements as outlined in the CAO issued by the ADEQ Office of Water Quality, Enforcement Division and to authorizes the Mayor and Clerk to sign the CAO on behalf of the City.

PASSED AND APPROVED by a majority of the City Council this 21 day of Dec., 2017.

APPROVED:


Keith Greene, Mayor

ATTEST:


Wayne Beck, City Clerk