

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Magazine
P.O. Box 367
Magazine, AR 72943

LIS No. 21- **016**
Permit No. AR0037397
AFIN 42-00031

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 rules issued thereunder by Arkansas Pollution Control and Ecology Commission (APC&EC).

The issues herein having been settled by the agreement of the City of Magazine (Respondent) and the Division of Environmental Quality¹ (DEQ), 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 209 South Reville, Magazine, Logan County, Arkansas.
2. Respondent discharges treated wastewater to an unnamed tributary, thence to Reville Creek, thence to Petit Jean River, thence to Blue Mountain Lake, thence to the Petit Jean River, thence to the Arkansas River in Segment 3G of the Arkansas River Basin.

¹ Pursuant to Act 910 of 2019, the Arkansas Transformation and Efficiencies Act, the former Arkansas Department of Environmental Quality is now the Division of Environmental Quality in the newly created Department of Energy and Environment.

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. DEQ is authorized under the Arkansas Water and Air Pollution Control Act ("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:

It shall be unlawful for any person to:

...

(3) Violate any provisions of this chapter or of any rule or order adopted by the [APC&EC] under this chapter or of a permit issued under this chapter by the [DEQ].

7. Ark. Code Ann. § 8-4-103(c)(1)(A) authorizes DEQ 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 rule 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. DEQ issued NPDES Permit Number AR0037397 ("Permit") to Respondent on March 24, 2014. The Permit became effective on April 1, 2014, and expired on March 31, 2019. DEQ issued the renewal Permit on April 27, 2020. The renewal Permit became effective on May 1, 2020, and expires on April 30, 2025.

10. On June 14, 2017, DEQ sent Respondent a certified letter identifying repeated violations of the permitted effluent limitation for Total Ammonia Nitrogen and requesting a Corrective Action Plan (CAP) for those Total Ammonia Nitrogen violations. The CAP was to have a milestone schedule, a final date of compliance, and be certified by a Professional Engineer (P.E.) licensed in the state of Arkansas.
11. On July 12, 2017, Respondent submitted a CAP, dated July 7, 2017, to DEQ. On July 19, 2017, DEQ notified Respondent by letter that the CAP dated July 7, 2017, was adequate with the stipulations that Respondent submit a milestone schedule by August 4, 2017, and submit quarterly progress reports beginning on September 15, 2017.
12. On August 10, 2017, Respondent submitted a milestone schedule with a final compliance date of October 1, 2018.
13. On September 13, 2017, December 27, 2017, and March 19, 2018, Respondent submitted quarterly progress reports.
14. On April 2, 2018, DEQ notified Respondent by letter that the Permit would expire on March 31, 2019, and that a complete renewal application must be submitted to the Division no later than October 2, 2018.
15. On May 21, 2018, DEQ notified Respondent that the CAP was concluded because Respondent had completed the corrective actions and had maintained compliance with the permitted effluent limits since September 2016.
16. On July 3, 2018, DEQ again notified Respondent by letter that the Permit would expire on March 31, 2019, and that a complete renewal application must be submitted to the Division no later than October 2, 2018..

17. On August 31, 2018, DEQ conducted a routine compliance evaluation inspection of the facility. During the inspection, the following violations were documented:

- a. Improper operation and maintenance, as demonstrated by the following conditions:
 - i. Vegetation removed from the sand filter beds was not disposed of properly;
 - ii. Holes in the distribution pipes were clogged and not dispersing water evenly across the entire sand filter bed;
 - iii. Water was trickling over the sand filter wall; and
 - iv. The edges of the 90 degree V-notch weir are no longer in a condition to allow for accurate flow measurements.

These conditions are a violation of Part III, Section B, Condition 1.A of the Permit and therefore are a violation of Ark. Code Ann. § 8-4-217(a)(3).

- b. Two (2) Chain of Custody (COC) forms did not clearly indicate which sample was preserved with sulfuric acid. Failure to indicate the sample preservation used for each sample is a violation of Part III, Section C, Condition 8.A of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
- c. Two (2) COC forms did not indicate that the Fecal Coliform Bacteria (FCB) sample was preserved with sodium thiosulfate. Failure to indicate the sample preservation used for each sample is a violation of Part III, Section C, Condition 8.A of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

18. On October 12, 2018, DEQ notified Respondent by letter of the August 31, 2018 inspection results and requested a written response to each violation documented in the inspection report be submitted to DEQ by October 26, 2018.
19. On October 26, 2018, Respondent submitted a written response to the violations documented during the August 31, 2018 inspection.
20. On October 26, 2018, and October 30, 2018, Respondent submitted the Permit renewal application and additional information, respectively. The complete Permit renewal application was submitted after October 2, 2018. Failure to submit a complete permit renewal application at least 180 days before the expiration date of the Permit is a violation of Part III, Section D, Condition 10 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
21. On November 2, 2018, DEQ notified Respondent by letter that the permit renewal application was determined to be administratively complete on October 30, 2018.
22. On December 12, 2018, DEQ notified Respondent that the inspection response submitted on October 26, 2018, sufficiently addressed the violations documented in the inspection report.
23. On January 22, 2019, DEQ sent Respondent a Proposed Consent Administrative Order. The Proposed Order was for Respondent's failure to submit a complete Permit renewal application by October 2, 2018, as required by Part III, Section D, Condition 10 of the Permit.
24. On April 10, 2019, Consent Administrative Order LIS 19-013 (CAO LIS 19-013) became effective.
25. On July 15, 2020, DEQ received an anonymous complaint alleging the following:
 - a. The wastewater treatment plant is leaking raw/partially treated sewage into the local stream;

- b. Raw/partially treated wastewater is overflowing from number four trickle filter onto the ground;
- c. Filters have not been rotated in months therefore clean water flow is suppressed; and
- d. Sweeping arms in clarifiers have been inoperable for several months.

26. On July 20, 2020, DEQ conducted a routine compliance evaluation inspection and an SSO/Collection System inspection of the facility. During the inspection the following violations were documented:

- a. There was an unpermitted discharge from the eastern most filter bed that flowed over the south filter bed wall and around the chlorine disinfection structure before rejoining the effluent stream below the V-notch weir. The unpermitted discharge from the filter bed and bypass of the chlorine disinfection structure is a violation of Part 1 Section A and Part III, Section B, Condition 1.A of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
- b. Respondent reported Ammonia Nitrogen exceedances for the months of June 2019 and September 2019. These exceedances are a violation of Part 1 Section A of the Permit and therefore are a violation of Ark. Code Ann. § 8-4-217(a)(3).
- c. Improper operation and maintenance, as demonstrated by the following conditions:
 - i. Excess solids and floating material in the aeration cells of the treatment plant;
 - ii. Floating material in the clarifiers;

- iii. The facility does not have a sludge judge for proper process control decisions such as when to waste and return sludge and remove solids from the aeration cells and clarifiers.
- iv. The lift station on Powell Street needs a sign with contact information listed.
- v. The belt guards on the pumps at both lift stations should be re-installed to reduce risk of injury.

These conditions are a violation of Part III, Section B, Condition 1.A of the Permit and therefore are a violation of Ark. Code Ann. § 8-4-217(a)(3).

27. On July 30, 2020, DEQ notified Respondent of the inspection results via certified letter and requested a written response with the corrective actions taken to address the violations documented in the inspection report.

28. On September 4, 2020, DEQ received Respondent's response to the violations documented in the July 20, 2020 inspection report. Respondent stated the following in its response:

- a. The overflow on the eastern most sand filter bed has been stopped.
- b. The solids, floating material, and vegetation was removed from the plant.
- c. The holes in the pipe on the western filter bed have been cleaned.
- d. The vegetation in the contact chamber has been removed.
- e. A Sludge Judge has been purchased.
- f. The sign with the contact information was replaced at the Powell Street lift station.
- g. All belt guards were replaced at both lift stations.
- h. An electrician got both lift stations to demonstrate the second pump.

29. On September 17, 2020, Respondent submitted a plan for compliance with the development and implementation of Best Management Practices (BMPs) for the reduction of Total Residual Chlorine (TRC) in accordance to Part II.8 of the Permit.

30. On December 9, 2020, DEQ notified Respondent that the BMP TRC report was deemed adequate.

31. On December 9, 2020, DEQ conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit. The review revealed nine (9) violations of the Ammonia Nitrogen permitted effluent discharge limits detailed in Part I, Section A of the Permit from August 1, 2017, through October 31, 2020.

32. Each of the nine (9) discharge limitation violations listed in Paragraph 31 above constitutes a separate permit violation for a total of nine (9) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

33. DEQ conducted a review of Sanitary Sewer Overflows (SSOs) reported by Respondent in accordance with the Permit. The review revealed one (1) SSO between July 1, 2017 and August 31, 2020. The SSO is a violation of Part II Condition 5 of the Permit and also a violation of Ark. Code Ann. § 8-4-217(a)(3).

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Upon the effective date of this Order, CAO LIS 19-013 shall be closed.
2. Within sixty (60) calendar days of the effective date of this Order, Respondent shall submit to DEQ, for review and approval, a comprehensive Corrective Action Plan (CAP) developed by a Professional Engineer licensed in the state of Arkansas. The CAP shall include an evaluation of treatment system and its components to include the filter beds to ensure optimum operation and treatment, milestone schedule, and final compliance date of June 30,

2022. Upon review and approval by DEQ, Respondent shall comply with the terms, milestone schedule, and final compliance date contained the approved CAP. The milestone schedule and final compliance date shall be fully enforceable as terms of this Order.

3. Respondent shall, within ninety (90) calendar days of the effective date of this Order, submit to ADEQ, for review and approval, a comprehensive Sanitary Sewer Flow Monitoring and Infiltration and Inflow (I&I) Study ("Study") developed by a PE licensed in the state of Arkansas. The Study shall include, at minimum, a baseline for sanitary sewer flows, rainfall monitoring, an estimate of available sewer capacity, identification of sources of I&I, an estimation of I&I, and a plan and milestone schedule for reducing I&I with a date of final compliance no later than December 31, 2023. The Study shall detail the methods and best available technologies that will be used to correct the violations listed in Findings of Fact Paragraph 33 and prevent future violations. Upon review and approval by ADEQ, Respondent shall comply with the terms, milestone schedule, and final compliance date of December 31, 2023. The milestone schedule and final compliance date of December 31, 2023 shall be fully enforceable as terms of this Order.

4. On or before the fifteenth (15th) day of the month following the effective date of this Order, and each quarter thereafter for a period lasting until this Order is closed, Respondent shall submit quarterly progress reports detailing the progress that has been made towards compliance.

5. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Two Thousand Eight Hundred Dollars (\$2800.00), or one-half of the full civil penalty of One Thousand Four Hundred Dollars (\$1400.00) if this Order is signed and returned to the Office of Water Quality Enforcement Branch, DEQ, 5301 Northshore Drive, North Little Rock, Arkansas, 72118-5317, within twenty (20) calendar days of

receipt of this Order. Payment is due within thirty (30) calendar days of the effective date of this Order. Payment of the penalty shall be made payable to the Division of Environmental Quality, and mailed to the attention of:

DEQ, 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, DEQ shall be entitled to attorneys' fees and costs of collection.

6. Failure to meet any requirement or deadline of this Order constitutes a violation of this Order. If Respondent should fail to meet any such requirements or deadlines, Respondent consents and agrees to pay on demand to DEQ 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 that may be available to DEQ by reason of failure by Respondent to comply with the requirements of this Order.

7. 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 DEQ, 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.

8. DEQ 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 DEQ promptly, as provided in the preceding paragraph of this Section, shall be grounds for a denial of an extension.

9. All requirements by the Order and Agreement are subject to approval by DEQ. Unless otherwise specified herein, in the event of any deficiencies, Respondent shall, within the timeframe specified by DEQ, submit any additional information or changes requested, or take additional actions specified by DEQ to correct any such deficiencies. Failure to respond adequately to such Notice of Deficiency within the timeframe specified in writing by DEQ constitutes a failure to meet the requirements established by this Order.

10. This Order is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d) and APC&EC Rule 8 and shall not be effective until thirty (30) calendar days after public notice is given. DEQ retains the right to rescind this Order based upon the comments received within the thirty (30) 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 Rule 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.

11. Nothing in this Order shall be construed as a waiver by DEQ 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 that is not expressly addressed herein, nor does it relieve Respondent of its responsibilities for obtaining any necessary permits.

12. 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.

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

14. 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 as set forth in this Order. See Exhibit A.

SO ORDERED THIS 8th / 10th DAY OF February, 2021.

Becky W. Keogh
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

City of Magazine

BY: Vicki Smith
(Signature)

Vicki Smith
(Typed or printed name)

TITLE: City Clerk

DATE: 2-8-21



MAGAZINE CITY COUNCIL MEETING

February 8, 2021

The council met in regular session on February 8, 2021 at 5:00 p.m.

Mayor McConnell is absent tonight due to illness. City Clerk Vicki Smith will perform all duties of Mayor during his absence. A.C.A 14-44-107 (c)(1)-(3); A.C.A 14-45-105(c)(1)-(3).

Meeting called to order. Roll call of members.

Aldermen present : Mychaela Bennett, Wayne Corbitt, Amanda Shomber, Joe Cheney, Johnny Mills. Sammie Smith absent.

Alderman Bennett moved to suspend the reading and approve the January minutes with a second from Alderman Corbitt. All members voted yes. Motion passed.

Visitors: Loy Claunch, Matthew Breckenridge of Crafton Tull, Beth Shumate, Mike Longley, Ray West.

Loy Claunch, Matthew Breckenridge of Crafton Tull reviewed finding with Council regarding sewer treatment plant repairs that are needed and required for NPDES Permit Number AR0037397, AFIN 42-0031 and Proposed Consent Administrative Order from ADEQ.

Alderman Corbitt motioned to enter agreement with Crafton Tull on February 8, 2021 and pay fine of 2800.00 in which 50% is due and will be paid now. Seconded by Alderman Shomber. All members voted yes. Motion passed.

Financial Reports and paid bills for the Water & Sewer Dept. and City were presented. Vicki Smith also informed the Council of the \$8000 budgeted transfer from General Fund to Lopfi account. Alderman Corbitt motioned to approve financial reports and bills. Seconded by Alderman Bennett. All members voted yes. Motion passed

Old Business:


New Business:

Dollar General application for alcohol beverages was rescinded by ADC because this portion of Logan County is dry.

Council agrees to limit unnecessary spending by employees and work on small tool inventory.

Mike Longley was told by Council that sewer plant office needs to be cleaned by next Council Meeting and his personal school bus is to be removed.

Alderman Corbitt motioned to adjourn. Alderman Shomber seconded. All members voted yes. Meeting adjourned.

Stanley McConnell, Mayor

Vicki Smith, City Clerk