

IN THE ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:
CITY OF MONTICELLO, ARKANSAS-EAST PLANT
LIS NO. 15-
PERMIT NO. AR0021831
AFIN 22-00379

**RESPONSE OF CITY OF MONTICELLO
TO PROPOSED CONSENT ADMINISTRATIVE ORDER**

City of Monticello, and for its response to Consent Administrative Order, responds as follows, to wit:

FINDINGS OF FACT

1. Respondent operates a municipal waste water treatment plant (hereinafter "facility") located in 1000 Florence Road, Monticello, Drew County, Arkansas.

RESPONSE: Concur.

2. Respondent is regulated pursuant to the National Pollutant Discharge Elimination System (hereinafter "NPDES").

RESPONSE: Concur.

3. Respondent discharges treated wastewater to an unnamed tributary, thence to Godfrey Creek, thence to Lower Cutoff Creek, thence to Seven Devils Lake, thence to Bayou Bartholomew in Segment 2B of the Ouachita River Basin.

RESPONSE: Concur.

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).

RESPONSE: Concur.

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.

RESPONSE: Concur.

6. NPDES Permit Number AR0021831 (hereinafter "Permit") became effective on July 1, 2012, and expires on June 30, 2017.

RESPONSE: Concur.

7. 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].

RESPONSE: Concur.

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

RESPONSE: Concur.

9. Pursuant to Ark. Code Ann. 8-4-103(c)(1)(B), "Each day of a continuing violation may deemed a separate violation for purposes of penalty assessment."

RESPONSE: Concur.

10. On March 10, 2015, the Department conducted a routine compliance inspection of the facility. The inspection revealed the following operational and maintenance issues:

- a. At the time of the inspection the aerator in the easternmost pond was not in operation.
- b. The curtain in the west pond was under the surface of the water and not operating as designed.

These failures violate Part III Section B.1.A. of the Permit, which requires that the permittee at all times properly operate and maintain all facilities and systems of treatment and control that are installed or used by the permittee to achieve compliance with the conditions of the permit, and therefore also violates Ark. Code Ann. 8-4-217(a)(3).

RESPONSE: The aerators were promptly repaired, on March 11, 2015 by operator Charlie Hammock, as referenced in the City's Letter of May 27, 2015.

The curtain was raised and repaired with floatation device, on March 16, 2015 by operator Charlie Hammock, as referenced in the City's Letter of May 27, 2015.

City of Monticello currently has a licensed Class III Wastewater Operator supported by four Class II wastewater operators. City of Monticello is implementing more cross-training of staff, and more ongoing education to increase the awareness of permit requirements,

ADEQ rules and state and federal laws. In addition, City of Monticello is developing various daily, weekly and monthly checklists for staff to use to help them organize their routine tasks better, and also for supervisory staff to be able to monitor the operators' activities better, all to ensure future compliance with state and federal rules and regulations.

11. On August 14, 2015, the Department conducted a review of certified Discharge Monitoring Reports (hereinafter "DMR") submitted by the Respondent in accordance with the Permit. The review revealed the following violations of the Permit related to the aforementioned DMRs:

a. From July 1, 2012 through November 30, 2015, Respondent has reported seven (7) violations of the effluent characteristic limitation detailed in the Permit, specifically five (5) violations of Discharge Flow as percentage of Stream Flow, one (1) violation of pH, and one (1) violation of total recoverable Copper. These failures violated Part I, Section A of the Permit and therefore Ark. Code Ann. 8-4-217(a)(3).

b. From July 1, 2012 through November 30, 2015, Respondent failed to submit twenty-four (24) required DMR's by the 25th day of the month following the completed reporting period. These failures violated Part III, Section C.5 of the Permit and therefore Ark. Code Ann. 8-4-217(a)(3).

c. For the monitoring periods ending on September 30, 2014, on December 31, 2014, and on March 31, 2015, Respondent failed to conduct required effluent monitoring for Total Recoverable Copper. For the monitoring period ending on December 31, 2014, Respondent failed to conduct required monitoring for Whole Effluent Toxicity. For the monitoring period ending on February 28, 2015, Respondent failed to conduct required effluent monitoring for Biochemical Oxygen Demand, Total Suspended Solids, Dissolved Oxygen, Fecal Coliform Bacteria, Total Phosphorus, Nitrate +Nitrate Nitrogen and pH. These failures violated Part I, Section A of the Permit and therefore Ark. Code Ann. 8-4-217(a)(3).

RESPONSE: The above deficiencies took place during a period of time of instability at the City of Monticello. Historically, the City's finance director, Kim Fletcher, solely handled communication between the City's engineering consultant and their lab, and reading and filing DMRs with the ADEQ. In September 2013, Mrs. Fletcher left the city suddenly in the light questionable practices during a city audit. In aftermath of Mrs. Fletcher's departure, her duties related to processing DMR was not communicated to her predecessor. To compound the issue further, in March 2014 Monticello Mayor Allen Maxwell passed away in office. During this time of instability and a lack of clear leadership, the City was notified by ADEQ of its deficiencies in

submitting DMR reports.

From the construction of the facility to April 2014, the City employed the services of McClelland Consulting Engineers Inc. to manage for collecting samples, analyzing samples, monitoring permit parameters, submitting quarterly reports in compliance with permit requirements, advice to the City on permit deficiencies, and to provide supervisory and overseeing services. The City was not aware that the outside laboratory service provider failed to collect samples, failed to prepare DMR reports, and failed to provide advisory services for the period of time the deficiencies are identified. Upon information and belief, the failure of the prior engineering consultant, sample collection and analytical service provider was not limited to City of Monticello. In an investigation of deficiency of the City and its engineer to properly report DMRs, the City discovered that the engineer employed by the City had not completed testing nor reported to the City nor ADEQ in several months. Other cities have fallen victim to the same failures.

In a course of action to remedy said deficiencies, the City employed, in May 2014, ETC Engineers & Architects, Inc. to manage the testing and reporting of the City's facility. In establishing a procedure for the City to properly review and approve DMRs prepared by ETC Engineers & Architects, Inc., and their lab Arkansas Analytics, Inc., Interim Mayor Joe Rogers, in September 2014, appointed finance clerk Tammy Kelly to be a cognizant official. In August 2015, Ms.

Kelly became ill being force to take extended leave from the city. During Ms. Kelly's ADEQ notified the City once again of its deficiencies in properly reporting DMRs to the agency. In an investigation of deficiency, income mayor Zackery Tucker, discovered that Ms. Kelly had not been properly processing and reporting the DMRs, and said duties and responsibilities had not been communicated to be completed in her absence.

Upon receipt of this proposed consent order, the Mayor Tucker has resourced ETC Engineers to establish better internal checks and balances to ensure future compliance with state and federal laws, rules and regulations. The City of Monticello believes and, therefore, represents that the activities continuing since the expiration of the permit are otherwise compliant with the law, save and except for the failure to renew the permit, which deficiency is being addressed.

12. In addition, Respondent is a Major Municipal Treatment Works pursuant to 40 C.F.R. 122.26(b)(14) required to obtain additional coverage under an NPDES Industrial Stormwater General Permit (hereinafter "General Permit") as stated in 40 C.F.R. 122.26(a), which is incorporated by APC&EC Reg. 6.104. Respondent discharges stormwater associated with industrial activity without coverage under the General Permit in violation of 40 C.F.R. 122.26(a) APC&EC Reg. 6, and Ark. Code Ann. 8-4-217(a)(3).

RESPONSE: The above deficiencies took place during a period

of time when City of Monticello was relying upon the services of another engineering consultant, sample collection and analytical services provider. Third parties were responsible for collecting samples, analyzing samples, monitoring permit parameters, submitting quarterly reports in compliance with permit requirements, advice to the City on permit deficiencies, and to provide supervisory and overseeing services. The City was not aware that the outside laboratory service provider failed to collect samples, failed to prepare DMR reports, and failed to provide advisory services for the period of time the deficiencies are identified. Upon information and belief, the failure of the prior engineering consultant, sample collection and analytical service provider was not limited to City of Monticello. Other cities have fallen victim to the same failures.

Recently, the City of Monticello has engaged a different engineering service and laboratory service providers, and has also established better internal checks and balances to ensure future compliance with state and federal laws, rules and regulations. That the City of Monticello believes and, therefore, represents that the activities continuing since the expiration of the permit are otherwise compliant with the law, save and except for the failure to renew the permit in a timely manner, which deficiency is being addressed.

13. By standard mail on April 10, 2015 and by certified mail May 14, 2015, the Department notified Respondent of the results of the inspection. To date, Respondent failed to respond to both

notices.

RESPONSE: The City timely prepared a response and hand delivered it to the front desk of the ADEQ office, also timely, by the City's engineer. Somehow, the timely response did not reach the intended recipient. A copy of the response that was earlier and timely submitted is attached hereto.

ORDER AND AGREEMENT

The City is in full concurrence with the proposed Order and Agreement, except as set forth herein:

1. The City Council of the Respondent has authorized the Mayor and City Clerk-Treasurer to expend funds for compliance activities required by this Order, including, but not being limited to, the payment of a civil penalty in the amount of \$22,650.00.

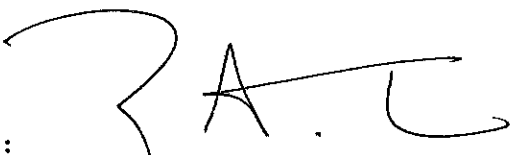
RESPONSE: It is noted that there are presently two procedures against the City at the present time. The instant proceeding for the East Plant and a separate proceeding for the West Plant. This causes most of the deficiencies determined by ADEQ to be two violations, when the overwhelming number of deficiencies were caused by the failure to properly test and document by the City's prior engineers and service providers. The issues were common to both the East Plant and the West Plant and have resulted in doubling the potential liability of City of Monticello as its responsibility for the failure of its prior service providers. These fact coupled with the knowledge of the recent instability in leadership, the City of

Monticello, believes the proposed civil penalty is excessive for the nature of the violations.

The City of Monticello recognizes the three violations outlined in the agency's proposed consent order on this facility, namely:
1) Item #10 - physical violations with failed equipment, 2) Item #11 - deficiencies with effluent or report related DMR forms, and
3) Item #12 - failure to maintain a stormwater permit.

The City of Monticello proposes the agreement of a civil penalty in an amount equal to \$1,000.00 per violation; or a total civil penalty in an amount of \$3,000.00.

Respectfully Submitted,
City of Monticello, Arkansas

By: 

Its Mayor