

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Wynne
121 East Merriman Avenue
Wynne, Arkansas 72396

LIS No. ~~17-~~ 18-010
Permit No. AR0021903
AFIN 19-00071

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 Wynne (“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 facility (“Facility”) located at 545 Bowden Road, Wynne, Cross County, Arkansas.
2. Respondent discharges treated wastewater to a drainage ditch, thence to Caney Creek, thence to the L’Anguille River, thence to the St. Francis River in Segment 5B of the St. Francis 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 AR0021903 (“Permit”) was issued to the Respondent on March 4, 2013. The Permit became effective on April 1, 2013, and will expire on March 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, March 31, 2018.

12. On April 4, 2017, and June 6, 2017, Respondent was notified that the Permit would expire on March 31, 2018, and that in order to continue the regulated activity, a complete renewal application must be received by the Department no later than October 2, 2017.

13. The complete Permit renewal application was not received by October 2, 2017. Failure to submit the Permit renewal application by October 2, 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 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.

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 the civil penalty as set forth in this Order. See Exhibit ___.

SO ORDERED THIS 25 DAY OF January, 2017.

Becky W. Keogh
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

CITY OF WYNNE

BY: [Signature]
(Signature)

Robert STACY
(Typed or printed name)

TITLE: Mayor

DATE: 1-18-17

CITY OF WYNNE

RESOLUTION NO. 01 09 2018 A

A RESOLUTION APPROVING A CONSENT ADMINISTRATIVE ORDER TO BE ENTERED INTO WITH THE ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY; AUTHORIZING THE MAYOR AND CITY CLERK, ON BEHALF OF THE CITY, TO EXECUTE SAID ORDER; AND APPROPRIATING NECESSARY SUMS TO PAY THE PENALTY AS SET OUT IN THE ORDER.

WHEREAS, the Arkansas Department of Environmental Quality (ADEQ) has found that the City of Wynne, Arkansas, has failed to properly renew the city's permit to discharge waste water which is a violation of the Arkansas Water and Air Pollution Control Act and the Federal Water Pollution Control Act; and

WHEREAS, to avoid the imposition of substantial civil penalties. ADEQ has proposed a Consent Administrative Order, assessing a civil penalty against the City in the sum of \$1,000.00, designated as a voluntary civil penalty; and

WHEREAS, the City, in acknowledgment of the noted violations, desires to enter into the Consent Administrative Order, which allows the City to develop a plan for maintaining compliance with the Permit.

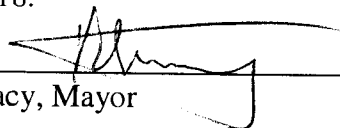
NOW, THEREFORE, be it resolved by the City Council of Wynne, Arkansas:

Section 1: That the Consent Administrative Order ("CAO") with ADEQ is hereby approved and the Mayor and City Recorder hereby are authorized and directed to City of Wynne - Resolution No. 01 09 2018A execute same on behalf of the City of Wynne. The CAO shall be in substantially the form as presented to the Council a copy of which is appended to this resolution.


Section 2: There is hereby appropriated the sum of \$1,000.00 to pay the voluntary civil penalty as provided in the CAO, and the City Clerk is authorized to expend said appropriated funds for the designated purpose.

Section 3: The Mayor be and he is hereby authorized to initiate all reasonable efforts and take all action deemed necessary to cause the city's wastewater treatment facility to become compliant with the permit limitations. The Mayor is further authorized to take such further and additional actions as he deems necessary and appropriate to comply with the Consent Administrative Order.

ADOPTED AND EXECUTED THIS 9TH DAY OF JANUARY 2018.


Bob Stacy, Mayor

ATTEST:


Tamera Brewster, City Clerk