

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Wynne Water Utilities
City of Wynne
121 East Merriman Avenue
Wynne, AR 72396

LIS No. 24- 162
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, Ark. Code Ann. § 8-4-101 *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C. § 1311 *et seq.*, and rules issued thereunder by Arkansas Pollution Control and Ecology Commission (APC&EC).

The issues herein having been settled by the agreement of the Wynne Water Utilities, City of Wynne (Respondent) and the Division of Environmental Quality (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 major municipal wastewater treatment facility ("facility") located at 545 Bowden Road, Wynne, Cross County, Arkansas.
2. Respondent discharges treated wastewater to an unnamed tributary, thence to Williams Creek, 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. 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 a 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 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."

Permit Renewal Application

9. DEQ issued NPDES Permit Number AR0021903 ("Permit") to Respondent on July 17, 2018. The Permit became effective on August 1, 2018, and expired on July 31, 2023.

10. DEQ issued the renewal Permit to Respondent on January 17, 2024. The Permit became effective on February 1, 2024, and expires on January 31, 2029.

Emergency Order

11. On March 31, 2023, a severe weather event occurred in Arkansas that produced a tornado rated as EF3. The tornado caused devastating damage across the state, with particular damage to Respondent's facility. As a result of the damage caused to Respondent's facility, DEQ issued Emergency Order LIS 23-028.¹

12. Respondent continues to perform clean-up activities and is rebuilding the facility.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Upon the effective date of this CAO, Emergency Order LIS 23-028 shall be closed.
2. Respondent shall submit quarterly progress reports detailing the clean-up activities at the facility and the status of the construction of the new wastewater treatment plant. Quarterly reports shall be due the 10th of the first month in each calendar quarter for the preceding quarter: January, April, July, and October.
3. Due to the ongoing conditions at the facility, Respondent is authorized to treat the City's wastewater including, but not strictly limited to, the manner prescribed below. Deviations from the authorized activities and requirements set forth below shall be conducted in consultation with DEQ.
 - a. Influent flow of untreated wastewater shall be directed to the equalization basin where settling of solids can occur.
 - b. From the equalization basin, wastewater flow may then be directed to the adjacent lagoon where reasonable efforts shall be made to aerate the wastewater to achieve a goal Dissolved Oxygen content of 6 mg/L.

¹ Emergency Order LIS 23-028:
https://www.adeg.state.ar.us/downloads/WebDatabases/PermitsOnline/NPDES/EnforcementReports/AR0021903_%20Wynne%20Emergency%20Order%20LIS%2023-028_20230413.pdf

- c. If conditions require, the adjacent lagoon may be used as additional emergency storage of wastewater.
- d. Reasonable efforts shall be made to achieve disinfection of the wastewater prior to discharge.
- e. Treated wastewater from the lagoon shall be discharged to the unnamed tributary to William Creek.
- f. Respondent shall make all reasonable efforts to measure the flow volume of the discharge from the lagoon.
- g. Respondent shall monitor the discharge once per week by grab sample for the following effluent characteristics:
 - i. Carbonaceous Biochemical Oxygen Demand;
 - ii. Total Suspended Solids;
 - iii. Ammonia Nitrogen;
 - iv. Dissolved Oxygen;
 - v. Fecal Coliform Bacteria;
 - vi. pH; and
 - vii. Temperature.
- h. Respondent shall report monthly to DEQ with the status of the emergency treatment. The reports shall include, but not be limited to, the volume of flow discharged, monitoring results and chain of custody for samples, any issues encountered, and any anticipated issues.
- i. Given the circumstances and availability of additional treatment components, additions or changes to the above proposed treatment shall be conducted in

consultation with DEQ, however, this consultation shall not limit Respondent's ability to make emergency decisions, up to and including emergency bypass of treatment, in order to protect human life or the integrity of the system.

4. Respondent shall continue to report No Data Indicator (NODI) Code T, NODI T = Environmental Conditions: Monitoring Not Possible, on the DMRs until this Order is closed. Respondent shall submit the DMRs in accordance with Part III.C.5 of the Permit.

5. All conditions contained in the Permit not expressly addressed in this Order shall remain in full force and effect, and Respondent shall comply with all conditions in the Permit not expressly modified by this Order.

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 be effective upon the DEQ Director and Chief Administrator's signature. DEQ retains the right to rescind this Order based upon the comments received within the thirty (30) calendar 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 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 21 DAY OF November, 2024.

Bailey Taylor
BAILEY M. TAYLOR, DIVISION OF ENVIRONMENTAL QUALITY, DIRECTOR
CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

Wynne Water Utilities, City of Wynne

BY: Be MAA
(Signature)

BLAKE MAROTTI
(Typed or printed name)

TITLE: GENERAL MANAGER

DATE: 11/20/2024

RESOLUTION NO. 11-12-24 A

A RESOLUTION AUTHORIZING THE CITY OF WYNNE TO ENTER INTO A CONSENT ADMINISTRATIVE ORDER WITH THE ARKANSAS DEPARTMENT OF ENERGY & ENVIRONMENT, DIVISION OF ENVIRONMENTAL QUALITY (DEQ)

WHEREAS, it is in the City's best interest to enter into an agreement with DEQ and resolve the violations of the Arkansas Water and Air Pollution Control Act listed in the proposed Consent Administrative Order.

WHEREAS, the Mayor and Public Works Director or other designated person, working with a Professional Engineer, have developed a plan of action to address the issues listed in the proposed Consent Administrative Order.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WYNNE:

- 1. The proposed Consent Administrative Order has been reviewed and approved by the City Council in a duly convened meeting with a quorum present.*
- 2. The City Council of the City of Wynne authorizes the Mayor to sign the proposed Consent Administrative Order.*
- 3. The City Council of the City of Wynne authorizes the Mayor and treasurer to expend funds for compliance activities required by the proposed Consent Administrative Order including but not limited to the payment of a civil penalty as set forth in the proposed Consent Administrative Order.*

Adopted on this 12th day of November, 2024

APPROVED: _____

James H. Brown
Mayor

ATTEST: _____

Samuel
City Clerk