

**ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT,  
DIVISION OF ENVIRONMENTAL QUALITY**

IN THE MATTER OF:

AFIN: 88-01606

LIS No. 21-115

CITY OF WYNNE AIR CURTAIN INCINERATOR  
1500 HIGHWAY 1 NORTH  
WYNNE, AR 72396

**CONSENT ADMINISTRATIVE ORDER**

This Consent Administrative Order (CAO) is issued pursuant to the authority delegated under the federal Clean Air Act, 42 U.S.C. § 7401 *et seq.*, and the federal regulations issued thereunder. In addition, this CAO 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.*, Arkansas Pollution Control and Ecology Commission (APC&EC) Regulation 7, APC&EC Regulation 8, APC&EC Regulation 18, APC&EC Regulation 19, and APC&EC Regulation 26.

The issues herein having been settled by agreement of City of Wynne Air Curtain Incinerator (Respondent) and the Director of the Division of Environmental Quality<sup>1</sup> (DEQ), it is hereby agreed and stipulated that the following FINDINGS OF FACT and ORDER AND AGREEMENT be entered.

**FINDINGS OF FACT**

1. Respondent owns and operates an air curtain incinerator located at 1500 Highway 1 North in Wynne, Cross County, Arkansas.
2. The Air Permit referenced in this CAO is the General Air Permit for Title V Air

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<sup>1</sup> 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 Arkansas Department of Energy and Environment.

Curtain Incinerators 2370-AGP-000 (the Permit). Respondent is assigned Tracking No. 2370-AGP-12, which indicates authority to operate under the Permit. The Permit was issued on September 8, 2020.

3. 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 Arkansas Pollution Control and Ecology Commission under this chapter or of a permit issued under this chapter by the Division of Environmental Quality;

4. Ark. Code Ann. § 8-4-103(c)(1)(A) provides, “Any person that violates any provision of this chapter and rules, permits, or plans issued pursuant to this chapter may be assessed an administrative civil penalty not to exceed ten thousand dollars (\$10,000) per violation.”

5. Pursuant to Ark. Code Ann. § 8-4-103(c)(1)(B) as referenced by Ark. Code Ann. § 8-4-304, “Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment.”

6. On April 6, 2021, DEQ personnel conducted an inspection of Respondent’s facility covering the reporting period of September 9, 2020, through February 28, 2021.

7. Specific Condition 5 of the Permit provides that Respondent shall not cause or permit the emission of air contaminants, including odors or water vapor and including an air contaminant whose emission is not otherwise prohibited by Regulation 18, if the emission of the air contaminant constitutes air pollution within the meaning of Ark. Code Ann. § 8-4-303.

8. APC&EC Reg. 18.602 provides that no person shall cause or permit the open burning of refuse, garbage, trade waste, or other waste material, or shall conduct a salvage

operation by open burning.

9. During the inspection, DEQ personnel observed open burning of municipal yard waste on the grounds outside of the air curtain incinerator. The burning municipal yard waste caused the emission of air contaminants that constitutes air pollution. Such act violates Specific Condition 5 of the Permit and violates APC&EC Reg. 18.602 and therefore violate Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

10. Photographs of the smoldering municipal yard waste at the time of the investigation are included in the inspection report.

11. In correspondence dated April 21, 2021, DEQ informed Respondent of the compliance issue identified during the inspection that was conducted on April 6, 2021. This was intended to provide Respondent with the opportunity to review the violations and submit any additional information Respondent deemed appropriate regarding the compliance issues.

12. In correspondence dated June 16, 2021, DEQ informed Respondent that formal enforcement action was proceeding in this matter.

### **ORDER AND AGREEMENT**

WHEREFORE, Respondent, neither admitting nor denying the factual and legal allegations contained in this CAO, and DEQ do hereby agree and stipulate as follows:

1. This CAO addresses all violations contained in the FINDINGS OF FACT.
2. In compromise and full settlement of the violations specified in the FINDINGS

OF FACT, Respondent agrees to pay a civil penalty of **NINE HUNDRED EIGHTY DOLLARS (\$980.00)**. Payment is due within thirty (30) calendar days of the effective date of this CAO. Such payment shall be made payable to:

DEQ, Fiscal Division  
5301 Northshore Drive  
North Little Rock, Arkansas 72118-5317.

In the event that Respondent fails to pay the civil penalty within the prescribed time, DEQ shall be entitled to attorneys' fees and costs associated with collection.

3. All applicable submissions required by this CAO are subject to approval by DEQ. In the event of any deficiency, Respondent shall, within fifteen (15) calendar days of notification by DEQ, submit any additional information requested. Failure to respond adequately to the notice of deficiency within fifteen (15) calendar days constitutes a failure to meet a deadline and is subject to the civil penalties established in the following Paragraph.

4. Failure to meet the limits, requirements, or deadlines of this CAO or the applicable approved schedules provided for herein constitutes a violation of this CAO. If Respondent fails to meet any limits, requirements, or deadlines, Respondent shall pay, on demand, to DEQ civil penalties according to the following schedule:

- |  |                |
|--|----------------|
| (a) First day through the fourteenth day:    | \$100 per day  |
| (b) Fifteenth day through the thirtieth day: | \$500 per day  |
| (c) More than thirty days:                   | \$1000 per day |

Stipulated penalties shall be paid within thirty (30) calendar days of receipt of DEQ's demand to Respondent for such penalties. These stipulated penalties may be imposed for delay in scheduled performance and shall be in addition to any other remedies or sanctions that may be available to DEQ by reason of Respondent's failure to comply with the requirements of this CAO. DEQ reserves its rights to collect other penalties and fines pursuant to its enforcement authority in lieu of the stipulated penalties set forth above.

5. If any event, including, but not limited to, an occurrence of nature, causes or may

cause a delay in the achievement of compliance by Respondent with the requirements or deadlines of this CAO, Respondent shall 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 have passed. 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.

6. DEQ may grant an extension of any provision of this CAO, 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 DEQ promptly, as provided in the previous Paragraph of the ORDER AND AGREEMENT, shall be grounds for a denial of an extension.

7. This CAO is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d), and therefore is not effective until thirty (30) calendar days after public notice of the CAO is given. DEQ retains the right and discretion to rescind this CAO based on comments received within the thirty (30) day public comment period.

8. As provided by APC&EC Regulation 8, this matter is subject to being reopened upon Commission initiative or in the event a petition to set aside this CAO is granted by the Commission.

9. Nothing contained in this CAO shall relieve Respondent of any obligations imposed by any other applicable local, state, or federal laws. Except as specifically provided herein, nothing contained in this CAO shall be deemed in any way to relieve Respondent of responsibilities contained in the permit.

10. Nothing in this CAO shall be construed as a waiver by DEQ of its enforcement authority over alleged violations not specifically addressed herein. In addition, this CAO neither exonerates Respondent from any past, present, or future conduct that is not expressly addressed herein, nor relieves Respondent of the responsibilities for obtaining any necessary permits.

11. This Order has been reviewed and approved by the City Council of the City of Wynne in a duly convened meeting with a quorum present. It is the intention of the City Council to be bound by the terms appearing in the Order.

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

13. The City Council of the City of Wynne 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 in the amount listed above.

SO ORDERED THIS 4 DAY OF November 2021.

Julie Linck  
JULIE LINCK, CHIEF ADMINISTRATOR  
ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT,  
DIVISION OF ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

CITY OF WYNNE AIR CURTAIN INCINERATOR

BY: Jennifer Hobbs (Signature)

Jennifer Hobbs (Typed or printed name)

TITLE: Mayor

DATE: October 18, 2021

BY: KA Watts (Signature)

Kevin A. Watts (Typed or printed name)

TITLE: City Clerk

DATE: 10-18-21