

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Wilmot
P.O. Box 67
Wilmot, AR 71676

LIS No. 22- 101
Permit No. AR0050989
AFIN 02-00031

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 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 Wilmot (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 municipal wastewater treatment facility ("facility") located on US Highway 65, Wilmot, Ashley County, Arkansas.
2. Respondent discharges treated wastewater Bayou Bartholomew, thence to the Ouachita River (in Louisiana) in Segment 2B of the Ouachita 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 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 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. § 8-4-217(b)(1)(C) provides:

(b) (1) It shall be unlawful for any person to engage in any of the following acts without having first obtained a written permit from the [DEQ]:

...

(C) To construct, install, or operate any building, plant, works, establishment, or facility, or any extension or modification thereof, or addition thereto, the operation of which would result in discharge of any wastes into the waters of this state or would otherwise alter the physical, chemical, or biological properties of any waters of this state in any manner not already lawfully authorized.

8. 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.
9. 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.”
10. DEQ issued NPDES Permit Number AR0050989 (“Permit”) to Respondent on October 31, 2008. The Permit became effective on November 1, 2008, and expired on October 31, 2013. The Permit was administratively continued pursuant to APC&EC Rule 6.201 until DEQ issued the renewal Permit on March 22, 2021, with an effective date of April 1, 2021, and an expiration date of March 31, 2026.
11. On April 18, 2011, DEQ and Respondent entered into CAO LIS 11-066 to address violations of the permitted effluent discharge limitations. CAO LIS 11-066 contained a milestone schedule detailing the corrective actions, including construction activities that needed to be undertaken, and a final compliance date of March 1, 2018.
12. On September 27, 2019, DEQ and Respondent entered into Amended CAO LIS 11-066-001 to extend the final compliance date from March 1, 2018, to June 30, 2020.
13. On January 24, 2020, DEQ and Respondent entered into Amended CAO LIS 11-066-002 to extend the final compliance date from June 30, 2020, to September 1, 2020.
14. On January 11, 2021, Respondent notified DEQ that construction had begun at the facility. Performing construction activity at the facility without having been issued a state construction permit from DEQ is a violation of APC&EC Rule 6.202(A) and Ark. Code Ann. § 8-4-217(b)(1)(C) and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

15. On March 25, 2021, Respondent submitted an updated construction schedule to DEQ.
16. On July 22, 2021, DEQ and Respondent entered into Amended CAO LIS 11-066-003 to extend the final compliance date from September 1, 2020, to October 31, 2021.
17. On September 26, 2021, Respondent submitted a Total Residual Chlorine (TRC) Best Management Practices (BMP) plan in accordance with Part I, Section B of the Permit. The plan detailed the actions that would be taken to reduce TRC, as well as the updates that had been made to the facility.
18. On October 1, 2021, DEQ notified Respondent via letter the TRC BMP Plan was deemed adequate with the following comments:
 - a. Please be advised that the renewal Permit that became effective on April 1, 2021, only requires Respondent to monitor and report TRC. The Permit does not enforce a TRC limit at this time. The 0.033 mg/L referenced in Part I.A, Footnote 3 of the Permit is the minimum quantification level (MQL), not a Permit limit.
 - b. Pursuant to Part I.B.2 of the Permit, please provide a milestone schedule of the Best Management Practices (BMPs) implementation for all steps and an estimated date when the reduced TRC levels will be achieved. Please submit this milestone schedule and the estimated date by October 8, 2021.
 - c. Please be advised that a State Construction Permit must be obtained before any significant changes to the treatment system are made. Respondent has conducted construction activities to make changes to the system without State Construction Permit coverage. Formal enforcement will be pursued for the failure to obtain a State Construction Permit before construction activities began.

- d. Once construction is complete, please submit a certification from a Professional Engineer (PE) licensed in the state of Arkansas stating that construction is complete. The certification should detail the construction activities performed and the equipment installed. Also submit the plans and specifications, including a certification that the plans and specifications comply with 10 States Standards.

19. On October 5, 2021, Respondent submitted an amended TRC BMP Plan with a milestone schedule to reduce TRC levels by November 1, 2022.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. On or before the effective date of this Order, Respondent shall submit a certification from a PE licensed in the state of Arkansas stating that construction is complete. The certification should detail the construction activities performed and the equipment installed. The plans and specifications, including a certification that the plans and specifications comply with 10 States Standards, shall also be submitted.

2. Respondent shall comply with the amended TRC BMP Plan and included milestone schedule with a final compliance date of November 1, 2022, submitted to DEQ on October 5, 2021. Respondent shall submit a Letter of Certification stating that the BMPs detailed in the amended TRC BMP Plan have been implemented.

2. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Two Hundred Fifty Dollars (\$250.00). 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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 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 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.

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 A.

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

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 a civil penalty as set forth in this Order. See Exhibit A.

SO ORDERED THIS ^{29th} ~~13th~~ DAY OF SEPTEMBER, 2022.



JULIE LINCK, CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

City of Wilmot

BY: 

(Signature)

CAROLYN HARRIS

(Typed or printed name)

TITLE: MAYOR

DATE: SEPTEMBER 13, 2022

RESOLUTION NO. WI 05-2022

A RESOLUTION AUTHORIZING THE CITY OF WILMOT 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 WILMOT:

- 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 Wilmot authorizes the Mayor to sign the proposed Consent Administrative Order.*
- 3. The City Council of the City of Wilmot 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 13th day of SEPTMBER , 2022

APPROVED: _____

Con F. Harris
Mayor

ATTEST: _____

Ermy Jackson
City Clerk