

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Wrightsville
P.O. Box 237
Wrightsville, AR 72183

LIS No. 22- **104**
Permit No. AR0051021
AFIN 60-00671

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 Wrightsville (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 plant (“facility”) located on Rock Road, Wrightsville, Pulaski County, Arkansas.
2. Respondent discharges treated municipal wastewater from a force main to the confluence of Fourche Bayou and the Arkansas River in Segment 3C of the Arkansas 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. § 8-4-103(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.”

9. DEQ issued NPDES Permit Number AR0051021 (“Permit”) to Respondent on December 26, 2018. The Permit became effective on January 1, 2019, and expires on December 31, 2023.

CAO LIS 16-095, as amended by LIS 16-095-001

10. On December 1, 2016, and November 15, 2017, DEQ entered into Consent Administrative Order LIS 16-095 (CAO LIS 16-095) and Amended Consent Administrative Order LIS 16-095-001 (Amended CAO LIS 16-095-001), respectively. CAO LIS 16-095 and Amended CAO LIS 16-095-001 addressed repeated effluent violations, improper operation and maintenance, and improper reporting. Amended CAO LIS 16-095-001 contained a final compliance date of March 1, 2019.

11. On September 30, 2019, Respondent submitted a certification of compliance, and both CAO LIS 16-095 and Amended CAO LIS 16-095-001 were closed on October 9, 2019.

Inspection Violations

12. On April 23, 2020, DEQ conducted a routine compliance evaluation inspection of the facility. The inspection revealed the following violations:

- a. Flow measurements reported on the Discharge Monitoring Reports (DMRs) for the month of November 2019 were inconsistent with the flow measurement records on the flow data sheet maintained at the facility. As a result, the Mass Monthly Average reported on the DMR was significantly lower than the Mass Monthly Average calculated using the onsite flow measurement records. Knowingly making a false statement, representation, or certification in any record or report filed or required to be maintained under the Act is a violation of Ark. Code Ann. § 8-4-217(a)(4) and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

- b. The facility lacked a primary flow measuring device. Failure to select and use an appropriate flow measurement device is a violation of Part III, Section C, Condition 2 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4- 217(a)(3).
- c. The following conditions demonstrate improper operation and maintenance of the facility:
 - (1) There was less than two (2) feet of freeboard in each lagoon.
 - (2) The levee separating lagoon 2 and the polishing pond had numerous saplings sprouting.

These conditions are violations of Part III, Section B, Condition 1.A of the Permit and therefore are violations of Ark. Code Ann. § 8-4-217(a)(3).

13. On June 5, 2020, DEQ notified Respondent of the inspection results via letter and requested a written response addressing the violations be submitted to DEQ by June 19, 2020.

14. On September 2, 2020, DEQ again notified Respondent of the inspection results via letter and requested Respondent submit a written response to each violation by September 15, 2020.

15. On September 10, 2020, DEQ received Respondent's response to the violations documented in the inspection report. On October 26, 2020, DEQ notified Respondent the response sufficiently addressed the violations found during the April 23, 2020 inspection.

Effluent Violations

16. On October 11, 2021, DEQ conducted a review of certified DMRs submitted by Respondent in accordance with the Permit.

17. The review revealed that Respondent reported the following violations of the permitted effluent discharge limits detailed in Part I, Section A of the Permit from October 1, 2019, through August 31, 2021:

- a. Seven (7) violations of Fecal Coliform Bacteria;
- b. Five (5) violations of Total Suspended Solids;
- c. Four (4) violations of Carbonaceous Biochemical Oxygen Demand; and
- d. One (1) violations of pH.

18. Each of the seventeen (17) discharge limitation violations listed in Paragraph 17 above constitutes a separate permit violation for a total of seventeen (17) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

19. On October 11, 2021, DEQ sent Respondent a letter requesting a Corrective Action Plan (CAP) to address the repeated effluent violations. The CAP was to have a milestone schedule, a final date of compliance, and be certified by a Professional Engineer (P.E.) licensed in the state of Arkansas.

20. On November 9, 2021, Respondent submitted a CAP to DEQ to address the effluent violations with a final compliance date of April 2022.

21. On November 15, 2021, DEQ sent Respondent a letter approving the CAP submitted on November 9, 2021, and requested that Respondent submit quarterly progress reports.

22. On December 15, 2021, Respondent submitted a progress report detailing the actions taken towards compliance.

23. On December 17, 2021, Respondent submitted a Revised CAP to DEQ with a final compliance date of May 2023.

24. On December 28, 2021, DEQ conducted a follow-up review of certified DMRs submitted by Respondent in accordance with the Permit.

25. The review revealed that Respondent reported the following violations of the permitted effluent discharge limits detailed in Part I, Section A of the Permit from September 1, 2021, through May 31, 2022:

- a. Eleven (11) violations of Total Suspended Solids;
- b. Four (4) violations of Fecal Coliform Bacteria;
- c. Five (5) violations of Carbonaceous Biochemical Oxygen Demand; and
- d. One (1) violation of pH.

26. Each of the twenty-one (21) discharge limitation violations listed in Paragraph 25 above constitutes a separate permit violation for a total of twenty-one (21) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

27. The review of the DMRs further revealed that the daily flow volume regularly exceeded the treatment plant design flow of 0.470 million gallons per day.

28. As part of the DMR review, DEQ reviewed the analytical laboratory reports submitted with the DMRs. The review of the laboratory reports revealed that the analyses for pH, Dissolved Oxygen (DO), and Total Residual Chlorine (TRC) for September 2021 were not analyzed within fifteen (15) minutes of sample collection as required by 40 C.F.R. § 136.3(b) Table II. Part I, Section A of the Permit also requires TRC to be measured within fifteen (15) minutes of sampling. Failure to analyze samples for pH, DO, and TRC within the maximum holding time of fifteen (15) minutes from sample collection is a violation of 40 C.F.R. § 136.3(b) Table II and Part III, Section C, Condition 3 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

Permit Compliance Schedule

29. Part I, Section B of the Permit required Respondent to submit to DEQ a plan for compliance with the development and implementation of Best Management Practices (BMPs) for the reduction of TRC in the effluent (TRC BMP Plan). The TRC BMP Plan is to include a schedule describing the time needed to develop and implement the BMPs and an estimated date that the reduced TRC levels will be achieved. The TRC BMP Plan was due to DEQ within 180 days of the effective date of the Permit, June 30, 2019.

30. On July 15, 2019, Respondent submitted a TRC BMP Report stating that Respondent would request the correctional facility to use less chlorine in its laundry operations, institute a sampling program to test for TRC in the influent beginning July 2019, and install a chlorine system for proper disinfection of effluent. Respondent also stated that further development of a BMP was not necessary.

31. On November 18, 2019, Respondent submitted a TRC Report stating that the discharge from the correctional facility averaged 2.15 mg/L TRC and that City of Wrightsville City Council would set up a meeting with the correctional facility to discuss the issue.

32. On April 26, 2022, Respondent submitted a CAP Quarterly Report that also addressed the TRC BMP Plan. Respondent stated that it would start sampling three (3) sources of influent to the facility after May 1, 2022, to assist with the residual chlorine issue. Respondent also stated that it was considering changing their method of disinfection and would be providing a report to the City of Wrightsville City Council regarding the disinfection options and costs.

Purchase Agreement

33. On September 6, 2022, Respondent entered into a Wastewater System Purchase Agreement with Central Arkansas Water (CAW). Under the terms of the Agreement, CAW will

provide the Respondent immediate operational and maintenance support, hire a professional engineer to conduct a study of the system that will identify all corrective actions necessary for consistent compliance, and may take ownership of the system on January 1, 2023.

34. On September 8, 2022, Respondent authorized CAW's engineer, Hawkins-Weir Engineers, Inc. (HW), to work with DEQ on Respondent's behalf to facilitate the terms of this Order in view of the potential pending ownership transition.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall collaborate with CAW and HW for the completion of the Feasibility Study and Revised CAP. Respondent shall allow CAW to make immediate short-term repairs necessary for compliance, if any, and consider recommendations for modifications to operational and sampling practices, if any.
2. CAW and HW's involvement in no way absolves Respondent's responsibilities under this order. If the transaction with CAW should fail to be completed, Respondent shall still be bound by the terms of this agreement.
3. On or before December 31, 2022, Respondent shall submit a Revised CAP to DEQ for review and approval. The Revised CAP shall include a milestone schedule and a final compliance date. Upon DEQ's approval of the Revised CAP, the approved Revised CAP shall be fully enforceable as terms of this Order.
4. On or before the final compliance date listed in the approved Revised CAP, Respondent shall submit a certification of compliance from a Professional Engineer (P.E.), licensed in the state of Arkansas, stating that the corrective actions listed in the approved Revised CAP have been completed and that Respondent is in compliance with the Permit.

5. Respondent shall continue to submit quarterly progress reports until this Order is closed. The quarterly progress reports shall detail the progress that has been made towards compliance with the final permitted effluent limits set forth in Part I, Section A of the Permit.
6. Respondent shall ensure that all samples are analyzed in accordance with 40 C.F.R. § 136.
7. Within sixty (60) calendar days of the effective date of this Order, Respondent shall submit to DEQ, for review and approval, an updated TRC BMP Plan that includes a milestone schedule for the development and implementation of BMPs and a final date, not to exceed December 31, 2023, by which reduced TRC levels will be achieved.
8. On or before the final compliance date listed in the approved updated TRC BMP Plan, Respondent shall submit a certification of compliance from a Professional Engineer (P.E.), licensed in the state of Arkansas, stating that the BMPs listed in the approved updated TRC BMP Plan have been implemented and that Respondent is in compliance with the Permit.
9. Respondent shall continue to submit quarterly progress reports until reduced TRC levels are achieved or this Order is closed, whichever occurs first. The quarterly progress reports shall detail the progress that has been made towards the development and implementation of BMPs to achieve compliance with the Permit.
10. Within ninety (90) calendar days of the effective date of this Order, Respondent shall submit to DEQ, for review and approval, a comprehensive Sanitary Sewer Flow Monitoring and Infiltration and Inflow (I/I) Study ("Study") developed by a P.E. licensed in the state of Arkansas. The Study shall include, at minimum, a baseline for sanitary sewer flows, rainfall monitoring, an estimate of available sewer capacity, identification of sources of I/I, an estimation of I/I, and a plan and milestone schedule for reducing I/I with a reasonable date of final compliance. The Study shall detail the methods and best available technologies that will be used to reduce I/I. Upon review and approval by DEQ, Respondent shall

comply with the terms, milestone schedule, and final compliance date. The milestone schedule and final compliance date shall be fully enforceable as terms of this Order.

11. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Five Thousand Two Hundred Dollars (\$5200.00), of which Four Thousand Two Hundred Dollars (\$4200.00) shall be conditionally SUSPENDED by DEQ. The allowance of a conditional suspension is based upon DEQ's primary goal of regulatory compliance and Respondent's current efforts to obtain compliance. If Respondent fully complies with this Order, the suspended civil penalty of Four Thousand Two Hundred Dollars (\$4200.00) shall be DISMISSED by DEQ. The suspension and dismissal of civil penalties is contingent upon Respondent complying with the terms of this Order. If Respondent violates any term of this Order, the full balance of Five Thousand Two Hundred Dollars (\$5200.00) shall be payable immediately to DEQ. Payment of the civil penalty in the amount of One Thousand Dollars (\$1000.00) 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 to the extent permitted by law.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

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

20. 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 10TH ~~4TH~~ DAY OF October, 2022.



JULIE LINCK, CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

City of Wrightsville

BY: 

(Signature)

Allan C. Loring

(Typed or printed name)

TITLE: Mayor

DATE: 10/03/2022



MAYOR
ALLAN C. LORING
alward2po2@yahoo.com

TREASURER
MABELINE HANSBERRY
mhansberry@cityofwrightsville-ar.org

RECORDER
SHEILA GARLING
rtwrightsv@yahoo.com

13024 Hwy. 365 S. | Little Rock, Ar. | 72206
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RESOLUTION NO. 2022-06

A RESOLUTION AUTHORIZING THE CITY OF WRIGHTSVILLE 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 WRIGHTSVILLE:

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 WRIGHTSVILLE authorizes the Mayor to sign the proposed Consent Administrative Order.
3. The City Council of the City of WRIGHTSVILLE 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 October day of 4th, 2022

APPROVED: _____

Mayor

ATTEST: _____

City Clerk