

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Glenwood
210 N. Second St.
Glenwood, AR 71943

LIS No. 24- 154
Permit No. AR0035645
AFIN 55-00034

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 Glenwood (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 minor municipal wastewater treatment facility (“facility”) located on Baker Road in Glenwood, Pike County, Arkansas.
2. Respondent discharges treated wastewater to an unnamed tributary of the Caddo River, thence to the Caddo River, thence to DeGray Lake, thence to the Ouachita River in Segment 2F 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 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.”

9. DEQ issued NPDES Permit Number AR0035645 (“Permit”) to Respondent on July 12, 2019. The Permit became effective on August 1, 2019, and expires on July 31, 2024.

Late Permit Renewal Application

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, July 31, 2024.

12. On August 2, 2023, and date of November 1, 2023, DEQ notified Respondent that the Permit would expire on July 31, 2024, and that in order to continue the regulated activity, a complete renewal application must be submitted no later than February 2, 2024.

13. On April 19, 2024, Respondent submitted the Permit renewal application, and on April 22, 2024, DEQ notified Respondent that the application was incomplete.

14. The complete Permit renewal application was not received by February 2, 2024. Failure to submit the complete Permit renewal application by February 2, 2024, is a violation of Part III, Section D, Condition 10 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

15. On July 8, 2024, the permit application was deemed administratively complete.

Complaint and Inspection

16. On May 10, 2023, DEQ received a notification from Respondent that the wastewater equalization basin (EQ basin) was discharging untreated wastewater from the base and sidewall of the levee of the EQ basin into a creek that flows into the Caddo River.

17. On May 11, 2023, DEQ received a complaint that there was untreated wastewater impacting the primary contact recreation area on the Caddo River. The complainant indicated that the discharge of untreated wastewater had been occurring for an extended period.

18. On May 18, 2023, DEQ sent Respondent a letter requesting immediate actions to address the unpermitted discharge and submission of a Communication Plan and Corrective Action Plan.

19. On May 18, 2023, and June 1, 2023, DEQ performed a compliance evaluation inspection over two site visits. The inspection revealed the following violations:

- a. Unpermitted discharges were observed from the following:
 - i. Seep from the EQ basin levee into an unnamed tributary of the Caddo River;
 - ii. Wastewater discharging from an unused lift station at Trestle Park; and
 - iii. Wastewater flowing through the gaps in the weir plate to an unknown location.

Unpermitted discharges are violations of Ark. Code Ann. § 8-4-217(a)(2) and therefore are violations of Ark. Code Ann. § 8-4-217(a)(3).

- b. The following operation and maintenance violations were observed:
 - i. Vegetation and trees growing in the EQ basin; and
 - ii. Several animal burrows present in the EQ basin levees.

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

- c. Respondent was bypassing the large clarifier and failed to notify DEQ, in violation of Part III, Section B, Condition 4 of the Permit and therefore in violation of Ark. Code Ann. § 8-4-217(a)(3); and
- d. The method of disinfection was altered and Respondent did not notify DEQ prior to the alteration, in violation of Part III, Section D, Condition 1 of the Permit and therefore in violation of Ark. Code Ann. § 8-4-217(a)(3).

20. On May 25, 2023, Respondent submitted a response to DEQ's letter dated May 18, 2023.

The response stated the following:

- a. Respondent had been draining the EQ basin and pumping it to the wastewater treatment plant;
- b. Respondent will continue to update DEQ but the unpermitted discharge appears to have ceased;

- c. Samples had been collected at the specified locations and the results were sent to DEQ;
- d. Respondent proposed sampling the EQ basin twice per week instead of three times per week and declined to provide two (2) consecutive weeks of clean samples;
- e. Results of the sample analysis have been posted to social media and the results have been delivered to the river businesses in the area; and
- f. Respondent did not feel a CAP was necessary, as Respondent believed the unpermitted discharge had ceased.

21. On May 30, 2023, DEQ performed a site visit of the areas near the collection system storage pond and concluded that the pond leaked during use and a review of any available pond construction documentation was warranted.

22. On July 10, 2023, DEQ notified Respondent of the inspection results and requested a written response be submitted within thirty (30) calendar days, and on July 18, 2023, DEQ received Respondent's response to the violations cited in the inspection report.

23. On June 14, 2023, Respondent provided DEQ with sample results and notified DEQ that the EQ basin was dry with the exception of potential rainfall, and that no additional sampling was planned.

24. On August 3, 2023, DEQ notified Respondent of the following observations and conclusions from the DEQ site visit performed on May 30, 2023.

- a. The collection system storage pond is leaking significantly when in operation;
- b. Any future use should be avoided unless emergency use is necessary;

- c. If the pond is used for emergency use, Respondent should send DEQ a report detailing the use, date of the use, and depth of wastewater accumulated during the event;
- d. The pond should not be used for any emergency use beyond December 31, 2023, without written authorization from DEQ; and
- e. Respondent's wastewater treatment plant should be repaired and returned to full operational capacity at the earliest opportunity.

25. Respondent requested the following be included in the Order:

Respondent performed several tests to determine if the pond was leaking during use. Tests included, sampling leachate entering the creek for E.coli and administering pond dye to the pond water. The E.coli sample results did not support the belief that the pond was leaking, as the leachate entering the creek was significantly lower than the sample collected from the pond. Also, no coloration was observed in any of the leachate after the pond dye was administered. Two dye test were performed, 1 being prior to the city coating the levee with bentonite clay, and 1 after the levee was coated with bentonite clay. The city and their engineer continue to believe the levee was not leaking. Samples collected ultimately point to the E.coli levels being elevated due to a manhole SSO further up stream in the same creek. This problem was ultimately discovered and remedied by the city.

26. On October 2, 2023, Respondent informed DEQ that the slide gate and level control in the racetrack was inoperable and requested approval to bypass pump flow during maintenance of the existing gate.

27. On October 12, 2023, DEQ notified Respondent that bypass is prohibited unless certain requirements are met, and requested additional information from Respondent because the October 2, 2023, email did not provide information to satisfy the requirements.

28. On October 12, 2023, Respondent submitted additional information, and on October 19, 2023, DEQ informed Respondent that the information contained in the October 12, 2023, email satisfied the requirements to approve the bypass.

DMR Violations

29. On February 23, 2024, DEQ conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.

30. 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 January 1, 2021, through December 31, 2023:

- a. Eleven (11) violations of *E. coli*;
- b. Seven (7) violations of Total Suspended Solids;
- c. Three (3) violations of Carbonaceous Biochemical Oxygen Demand; and
- d. One (1) violation of Total Residual Chlorine.

31. Each of the twenty-two (22) discharge limitation violations listed in Paragraph 30 above constitutes a separate permit violation for a total of twenty-two (22) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

32. The review of the DMRs revealed that Respondent failed to submit complete Non-Compliance Reports (NCRs) for effluent violations reported during the following three (3) monitoring periods:

- a. 2022: April and December; and
- b. 2023: February.

Failure to submit an NCR for each effluent violation is a violation of Part III, Section D, Condition 7 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

33. The review of the DMRs further revealed that Respondent failed to submit DMRs by the due date for the following eleven (11) monitoring periods:

- a. 2021: November;
- b. 2022: May; and
- c. 2023: January, March, April, May, July, August, September, October, December.

Failure to submit DMRs with the monitoring results obtained during the monitoring period no later than the 25th of the month following the completed monitoring period is a violation of Part III, Section C, Condition 5 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

34. Respondent is currently seeking funding from the Arkansas Department of Economic Development (ADEC) to replace the chlorine disinfection with UV disinfection.

35. DEQ conducted a review of the SSOs reported by Respondent in accordance with the Permit for the period of January 1, 2021, through February 23, 2024. The review revealed that Respondent reported ten (10) Sanitary Sewer Overflows (SSOs) totaling over 26,000 gallons. Respondent is permitted to discharge treated municipal wastewater from its permitted outfall. Respondent is not permitted to discharge untreated wastewater from its collection system. Each SSO constituted an unpermitted discharge. Each unpermitted discharge violated Ark. Code Ann. § 8-4-217(b)(1)(E) and therefore violated Ark. Code Ann. § 8-4-217(a)(3).

36. Respondent is currently undergoing a sewer main replacement project to replace the oldest mains and manholes in the collection system that are believed to be causing SSOs during precipitation events due to Inflow and Infiltration (“I&I”).

37. On August 9, 2024, Respondent submitted a request to use the existing EQ basin during high rain fall periods for emergency use only. Respondent’s request states that this will allow the additional flow caused by I&I to be pumped to the basin for a short term and then directed to the

wastewater treatment plant as soon as flows return to normal. Respondent contends, based on their evaluation, dye test, lab tests, and visual inspections that the basin is not leaking.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall comply with the existing Permit until the effective date of the permit renewal.
2. Within thirty (30) calendar days of the effective date of this Order, Respondent shall submit to DEQ, for review and approval, a comprehensive CAP developed by a Professional Engineer (P.E.) licensed in the state of Arkansas. The CAP shall include, at minimum, the methods and best available technologies that will be used to correct the violations listed in Findings of Fact Paragraph 30 and prevent future violations and include a reasonable milestone schedule with a date of final compliance no later than December 31, 2026. Upon review and approval by DEQ, Respondent shall comply with the terms, milestone schedule, and final compliance date contained in the approved CAP. The milestone schedule and final compliance date shall be fully enforceable as terms of this Order.
3. On or before the fifteenth (15th) day of the month following the effective date of this Order, and each quarter thereafter for a period lasting until this Order is closed, Respondent shall submit quarterly progress reports detailing the progress that has been made towards compliance with the permitted effluent limits set forth in Part I, Section A of the Permit. Within thirty (30) calendar days of the final compliance date in the approved CAP or by December 31, 2026, whichever occurs first, Respondent shall submit a final compliance report that includes a certification of compliance, signed and stamped by a P.E. licensed in the state of Arkansas.
4. Upon the effective date of this Order, Respondent is conditionally authorized to use the existing EQ basin for emergency use only during high precipitation events that cause flow in the

collection system to exceed the design capacity of the collection system or design flow of the facility until Respondent completes the Sewer Replacement Project. Authorization is conditioned upon Respondent performing the following actions for each instance of use of the EQ basin:

- a. Provide an email notification to DEQ at ee.water.enforcement.report@arkansas.gov with the start date and time of the diversion of flow to the EQ basin, the volume of wastewater diverted to the EQ basin, the date and time all the wastewater has been redirected to the wastewater treatment plant and the EQ basin is empty;
 - b. Conduct inspections a minimum of two times per week while the EQ basin is in use. Inspections shall not be conducted less than two (2) days apart and not more than five (5) days apart. Respondent shall use an inspection report template that has been approved by DEQ;
 - c. Maintain records of the amount of wastewater held in the EQ basin during each emergency use; and
 - d. Provide additional information upon request by DEQ.
5. Within thirty (30) calendar days of completion of the Sewer Replacement Project, Respondent shall submit to DEQ a detailed summary of projects completed.
6. Within sixty (60) calendar days following completion of the Sewer Replacement Project, Respondent shall submit a certification from a P.E. licensed in the state of Arkansas that the EQ basin and the levee are compliant with Ten States Standards or submit a Closure Plan, developed by a P.E. licensed in the state of Arkansas, for the EQ basin.
7. Respondent shall submit all DMRs in accordance with Part III, Section C, Condition 5 of the Permit.

8. Respondent shall submit NCRs in accordance with Part III, Section D, Condition 7 of the Permit.

9. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Eleven Thousand Five Hundred Fifty Dollars (\$11,550.00), of which Nine Thousand Fifty Dollars (\$9050.00) 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 efforts to take appropriate corrective actions to achieve compliance with the Permit. If Respondent fully complies with this Order, the suspended civil penalty of Nine Thousand Fifty Dollars (\$9050.00) 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 Eleven Thousand Five Hundred Fifty Dollars (\$11,550.00) shall be payable immediately to DEQ. Payment of the civil penalty in the amount of Two Thousand Five Hundred Dollars (\$2500.00) 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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) 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.

15. 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.

16. 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.

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

18. 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 12th DAY OF November, 2024.

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

APPROVED AS TO FORM AND CONTENT:

City of Glenwood

BY: William C Plyler Juan Sella
(Signature)

William C. Plyler Juan Sella
(Typed or printed name)

TITLE: Mayor Treas/Rec

DATE: 11/6/2024 11/6/2024

CITY OF GLENWOOD

RESOLUTION 24-13

A RESOLUTION PROVIDING FOR AND ADOPTING THE ACCEPTANCE OF DIVISION OF ENVIRONMENTS QUALITY NPDES PERMIT NO. AR0035645, AFIN 55-0034 PROPOSED CONESET ADMINISTRATIVE ORDER.

WHEREAS, City of Glenwood City Council agrees to accept the proposed NPDES Permit No. AR 0035645 AFIN 55-00034 with these stipulations that the Arkansas Division of Environmental Quality (DEQ) requires the City to complete.

WHEREAS, City of Glenwood City Council agrees to accept proposed Consent Administrative Order (CAO) through the Division of Environment Quality.

WHEREAS, City of Glenwood City Council agrees to accept and comply to all stipulations per the Letter from Arkansas Division of Environmental Quality.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF GLENWOOD, ARKANSAS THAT RESOLUTION 24-13 FOR THE PRESERVATION OF THE PUBLIC PEACE, HEALTH, AND SAFETY, SHALL TAKE EFFECT AND BE IN FORCE FROM AND AFTER ITS PASSAGE AND APPROVAL.

PASSED THIS 16 day of Nov, 2024.

William C Plyler

Billy Plyler, Mayor

ATTEST: [Signature]

Treasurer/Recorder

Jimmy Clark [Signature]

Alan Moore [Signature]

Chris Fuller [Signature]

Johnny Cox [Signature]