

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Almyra
P.O. Box 104
Almyra, AR 72003

LIS No. 24-156
Permit Number: AR0043761
AFIN 01-00124

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 the rules issued thereunder by Arkansas Pollution Control and Ecology Commission (APC&EC).

The issues herein having been settled by the agreement of City of Almyra (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 Almyra Pond Road, Almyra, Arkansas County, Arkansas.
2. Respondent discharges treated wastewater to an unnamed tributary of Mill Bayou, thence to Mill Bayou, thence to Bayou Meto, thence to the Arkansas River in Segment 3B 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 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 AR0043761 (“Permit”) to Respondent on February 28, 2019. The Permit became effective on March 1, 2019, and expired on February 29, 2024.

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, February 29, 2024.
12. On March 2, 2023 and June 1, 2023, Respondent was notified that the Permit would expire on February 29, 2024, and that in order to continue the regulated activity, a complete renewal application must be submitted no later than September 2, 2023.
13. DEQ received a Permit renewal application from Respondent on September 6, 2023, and notified Respondent that its application was incomplete on September 11, 2023.
14. Respondent submitted a complete Permit renewal application to DEQ on September 21, 2023.
15. The complete Permit renewal application was not received by September 2, 2023. Failure to submit the complete Permit renewal application by September 2, 2023, 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).

DMR Review

16. On October 25, 2023, DEQ conducted a review of certified Discharge Monitoring Reports (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 September 30, 2020 through August 31, 2023:
 - a. Seven (7) violations of Total Suspended Solids; and
 - b. Four (4) violations of Dissolved Oxygen.

18. Each of the eleven (11) discharge limitation violations listed in Paragraph 17 above constitutes a separate permit violation for a total of eleven (11) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

19. The review of the DMRs further revealed that Respondent failed to submit DMRs by the due date for the following twenty (20) monitoring periods:

- a. 2020: September;
- b. 2021: May, June, August, September, October, November;
- c. 2022: January, March, April, June, August, September, November; and
- d. 2023: January, February, May, June, July, and August.

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).

20. On March 22, 2021; February 14, 2022; August 23, 2022; and October 25, 2022, DEQ notified Respondent of late DMRs and requested they be submitted.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall comply with the existing Permit until either the effective date of the permit renewal or the effective date of the permit termination.
2. Respondent shall immediately comply with all permitted effluent limits, unless a Corrective Action Plan (CAP) is submitted and approved by DEQ, as provided in Paragraph 3 of this Order, in which case, Respondent shall comply will all permitted effluent limits no later than July 31, 2026.
3. If unable to comply with all permitted effluent limits immediately, Respondent shall, within thirty (30) calendar days of the effective date of this Order, submit to DEQ, for review and

approval, a comprehensive CAP developed by a Professional Engineer 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 17, prevent future violations, and include a reasonable milestone schedule with a date of final compliance no later than July 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.

4. If a CAP is submitted, 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. Respondent shall submit a final compliance report that includes a certification of compliance, within thirty (30) calendar days of the final compliance date in the approved CAP or by July 31, 2026, whichever occurs first.

5. Respondent shall submit all DMRs in accordance with Part III, Section C, Condition 5 of the Permit.

6. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Four Thousand One Hundred Fifty Dollars (\$4150.00), of which Three Thousand One Hundred Fifty Dollars (\$3150.00) shall be conditionally SUSPENDED by DEQ. The allowance of a conditional suspension is based upon DEQ's primary goal of regulatory compliance. If Respondent fully complies with this Order, the suspended civil penalty of Three Thousand One Hundred Fifty Dollars (\$3150.00) 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 Four Thousand One Hundred Fifty Dollars (\$4150.00) 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.

7. 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.

8. 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.

9. DEQ may grant an extension of any provision of this Order, 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 the DEQ promptly, as provided in the preceding paragraph of this Section, shall be grounds for a denial of an extension.

10. 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.

11. 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.

12. 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.

13. 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.

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

15. 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 18 DAY OF November, 2024.

Bailey Taylor

~~CALEB J. OSBORNE~~, DIVISION OF ENVIRONMENTAL QUALITY, DIRECTOR
CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

City of Almyra

BY: *Mark Bennett*

(Signature)

Mark Bennett

(Typed or printed name)

TITLE: MAYOR

DATE: 7/8/24

RESOLUTION NO. 2024-1

A RESOLUTION AUTHORIZING THE MAYOR AND TOWN RECORDER OF ALMYRA, ARKANSAS, TO EXECUTE A CONSENT ADMINISTRATIVE ORDER TO RESOLVE MATTERS WITH THE ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT, DIVISION OF ENVIRONMENTAL QUALITY, PERTAINING TO THE ALMYRA WASTEWATER TREATMENT PLANT AND RELATED MATTERS.

WHEREAS, the Town of Almyra, Arkansas (hereinafter, the "Town"), operates a municipal wastewater treatment plant ("facility"); and

WHEREAS, the Arkansas Department of Energy and Environment, Division of Environmental Quality ("ADEQ"), issued a permit to the Town pursuant to the federal Clean Water Act and related laws; and

WHEREAS, ADEQ has made findings of violations as more specifically stated in the proposed Consent Administrative Order (CAO"), a copy of which has been presented to the Mayor and Town Council; and

WHEREAS, the CAO contains an agreement for settlement of the issues pertaining to the violations and, among other matters, includes required payment of civil penalty of \$4,150.00 of which \$3150.00 shall be conditionally suspended so long as the Town complies with the terms of the CAO and submits payment in the amount of \$1,000.00; and stipulated daily penalties in the event of further noncompliance; and

WHEREAS, the Town Council has reviewed the CAO, with assistance of and review by the Town's legal counsel, and finds that approving the CAO is in the best interest of the Town and its inhabitants as a fair resolution of the pending matters pertaining to the facility;

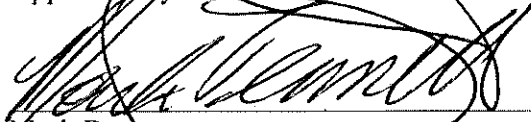
NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF ALMYRA, ARKANSAS, THAT:

Section 1. The above-described Consent Administrative Order is hereby approved in substantially the same form as presented. The Mayor and Town Recorder/Treasurer are hereby authorized and directed to sign said Order on behalf of the Town of Almyra, Arkansas. Execution of said Order shall be considered conclusive evidence of the Town Council's approval of any insertions, omissions, or changes approved by the Town Attorney or Mayor. Upon execution, a copy of said Order shall be kept in the Town's records.

Section 2. The Mayor and Town Recorder/Treasurer are hereby authorized and directed to expend funds for compliance activities required by the above-described Consent Agreement Order, including, but not limited to, payment of the civil penalty set forth therein.

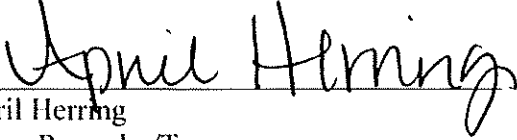
PASSED AND APPROVED in regular session this 8TH day of JULY, 2024.

Approved By:

A large, stylized handwritten signature in black ink, appearing to read "Mark Bennett", written over a horizontal line.

Mark Bennett
Mayor

Attest:

A handwritten signature in black ink, appearing to read "April Herring", written over a horizontal line.

April Herring
Town Recorder/Treasurer

CERTIFICATION

I, the undersigned Town Recorder for the Town of Almyra, Arkansas, hereby certify that the above Resolution is a true and correct copy of existing Resolution No. 2024-1 of the Town of Almyra, Arkansas, which was passed and approved on July 8, 2024 by a unanimous / majority (*circle one*) vote of the Town Council at a duly-called meeting in regular session at which a quorum was present.

(SEAL)

April Herring
April Herring
Almyra Town Recorder

Date: 7/8/2024