

Water, Sewer, and Solid Waste Committee

September 8, 2015

5:30 P.M.

(Or immediately following City Council Agenda Session)

City Hall – Room 326

Committee: Chairman Mark Kinion; Aldermen Sarah Marsh, Aldermen Martin Schoppmeyer, Aldermen John LaTour

Copy to: Mayor Lioneld Jordan; Sondra Smith, Don Marr, Paul Becker, Susan Norton, Jeremy Pate, Chris Brown, Lynn Hyke, Peggy Bell, CH2M HILL, Brian Pugh, Jeff Coles, Mark Rogers

From: Tim Nyander, Utilities Director

CALL TO ORDER

ROLL CALL

APPROVAL OF MEETING AGENDA

OLD BUSINESS/UPDATES:

a. *Lake Sequoyah Sediment Removal Project*

Storm water BMP's have been successfully implemented and a final grading permit issued by the City. Work has begun to prepare the site for placing geobags. This site prep work has been completed. Limited sediment removal to fill these geobags is anticipated to begin sometime in late September or early October of this year.

b. *White River Use Attainability Analysis (Minerals)*

We have had discussions with ADEQ. We are currently sharing the sample data used in the calculations. We hope to come to a mutual understanding of how potential permit limits will be calculated so that we can make an informed decision regarding the next logical steps in this process and develop a coherent long term strategy.

c. *Ozone Disinfection System Project*

Notice to proceed issued June 4, 2015. Work has started in the repurposed building including the installation of oxygen concentrators, ozone generators, tanks, and chillers. Work continues with the stainless steel piping and valves.

The ozone dissolution, injection and destruct plans are changing to move the equipment from the north channel (the north ½ of the existing basin) to the south channel. The south channel is currently not used. This move will permit the existing UV disinfection to remain on-line during construction and remain as a permanent back up to the new ozone disinfection.

d. *Baxter and Mount Sequoyah Water Tank Rehabilitation Improvements*

The Baxter and Mt. Sequoyah Water tank Rehabilitation project (painting) was advertised and the bid opening was scheduled for July 23, 2015. The plan holders list included seven contractors and 13 plan rooms/plan networks.

Unfortunately no bids were received.

Utilities has reached out to the contractors that asked questions during the per-bid time frame and have been told the reasons for not bidding are all time related. The contractors are busy and cannot fit this project into the time allotted this fall. They recommend re-advertising this winter and being flexible with the time for the improvements this spring.

Our plan is to advertise this winter. Funds remain in the consultants contract to advertise a second time.

NEW BUSINESS:

a. Trench Shoring

Bids were received and opened on August 25th for purchasing modular aluminum shoring for the Water & Sewer Division. The bids were as follows (plus applicable sales tax). United Rentals North America submitted the lowest bid and it meets specifications.

| | |
|------------------------------|-------------|
| United Rentals North America | \$29,561.54 |
| American Shoring | \$32,910.00 |
| ICM Inc. | \$34,341.48 |
| Ozark Laser Shoring | \$42,072.00 |

STAFF REQUESTS THIS BE FORWARDED TO THE CITY COUNCIL FOR APPROVAL

b. Ozone Equipment Sales Tax

Ordinance 5714 was approved by the Fayetteville City Council "An Ordinance waiving the

requirements of formal competitive bidding and approving the purchase of an ozone disinfection system from BlueInGreen, LLC of Fayetteville, Arkansas in the amount of \$1,780,825.00 plus any applicable taxes for the Noland Wastewater Treatment plant.” The sales tax was unknown at the time of the Ordinance.

The City requested an opinion from the State Department of Finance and Administration as to what components of the ozone disinfection system being installed at the Noland Plant is sales tax exempt. The Department requires that machinery and equipment must actually be a component part that actually mitigates environmental pollution to qualify for the pollution control machinery and equipment exemption. Therefore, the ozone generator chillers (\$82,750) which merely cool machinery involved in the pollution control process, the Ozone Generators (\$602,600) as well as the 75 KVA Step Down Transformers (\$6,650) do not qualify for the exemption

Tax Analysis for Taxable items for BlueInGreen, LLC

| June 2014 Proposed Equipment Pricing | | Taxable |
|---|------------------------|----------------|
| Ozone System | | |
| 2x Zenith 20x Ozone Generators (19 Quadblocks each) | \$602,600 | YES |
| 2x Carrier 23.4 Ton Chillers | \$82,750 | YES |
| 2x 75 KVA Step down Transformers | \$6,650 | YES |
| Total Taxable Amount | \$692,000 | |
| AR State Sales Tax 6.5% | \$44,980 | |
| Wash. Co. Sales Tax 1.25% | \$8,650 | |
| *Sales Tax Due | <u>\$53,630</u> | |

*Sales tax is based on destination of equipment.

BlueInGreen has invoiced the City for the sales tax amount.

The Ordinance and Contract with BlueInGreen did not include funding for the sales tax, as this amount had not been determined. Thus a change order is required for the Blue in Green Contract to increase the project funding for the sales tax.

STAFF REQUESTS THIS BE FORWARDED TO THE CITY COUNCIL FOR APPROVAL

c. Nutrient Trading

Earlier this year, the Arkansas Legislature passes Act 335, authorizing the formation of associations and groups to address water quality issues within specific watersheds. This is

important legislation to the City of Fayetteville as it has a vested interest in two area watersheds which have both pending studies and impending regulations placed on them. The cities utility departments in this area have informally discussed exploring the opportunity to use the authority granted by this new legislation to address the nutrient issues at the local level. To do this, the cities of Fayetteville, Springdale, Rogers and Bentonville want to bring to their respective City Councils, a resolution authorizing the formation of a working group to discuss the concept of nutrient trading within our watersheds.

d. Noland WWTP Gearbox Rebuilds

Fayetteville City Administration recommends approval of Bid 15-48 with Alliance Pump & Mechanical Inc., for the service to rebuild seven (7) gearboxes for the Noland WWTP for \$78,950.00 plus \$7,697.63 tax, totaling \$86,647.63. Funds are available within the Wastewater Treatment Plant CIP – Plant Pumps and Equipment project. The City received two bids on August 19, 2015. Alliance Pump & Mechanical Inc. submitted the lowest bid and it meets specifications.

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| Alliance Pump & Mechanical Inc. | \$78,950.00 |
| Evans Enterprises, Inc. | \$86,925.59 |

STAFF REQUESTS THIS BE FORWARDED TO THE CITY COUNCIL FOR APPROVAL

Capital Projects Update

| Number | Project Description | Contractor | Cost | % Complete |
|--------|--|-------------------------------------|-------------|-----------------------|
| 1 | White River Stream bank Restoration | Design WCRC | \$577,221 | In Design ETA 2016 |
| 2 | Swr Rehab–Cured in Place Pipe City Wide | Insituform | \$330,000 | 40% |
| 3 | South Mountain Pump Station Rehab | Design/Const. In–House | \$200,000 | 75% |
| 4 | Ramsey/Overcrest Sewer Replacement Design Phase | McClelland Engrs | \$228,644 | 98% |
| 5 | Hwy 112 (Maple Street) Water and Sewer Relocations AHTD Job 040582 | Brothers Construction | \$1,299,395 | 98% |
| 6 | West Water Transmission Line Survey and Easement Acquisitions | McClelland Engrs | \$1,000,000 | 40% |
| 7 | Noland Ozone Equipment | BlueInGreen | \$1,780,825 | 70% |
| 8 | Cost Share for trend analysis in Beaver Lake | Beaver Watershed Alliance | \$58,562 | 50% |
| 9 | Noland Transformer Repair Construction | City Council approval August 4,2015 | \$82,700 | 0% |
| 10 | Noland VFD (4) and motor rebuild (4) for aeration basin | Evans Enterprises | \$46,470 | 100% |
| 11 | Noland Effluent Storage Reservoir Fence | Finalizing Specifications | \$60,000 | 25% |

| | | | | |
|----|---|-------------------|--------------|------|
| 12 | Noland Ozone Construction | JL Bryson | \$867,010 | 10% |
| 13 | 2015 SSES | RJN | \$1,116,351 | 40% |
| 14 | Baxter and Mt. Sequoyah Tank Painting Design | Garver | \$149,900 | 95% |
| 15 | I-49 & Garland Relocation Design | Garver | \$102,742.50 | 100% |
| 16 | 18-inch Water Line Installation Regional Park (Contractor Portion) | Goodwin & Goodwin | \$707,007.50 | 90% |
| 17 | Hwy 45/Old Wire Road Intersection Utility Relocations | | \$600,000 | 0% |
| 18 | Zion Road Water/Sewer Construction | | \$1,200,000 | 0% |
| | | | | |
| | | | | |

PRESENTATIONS

ATTACHMENTS

Sales Tax Determination, ADFA
Sales Tax Calculation, COF
Act 335

ADJOURN

Next Water, Sewer, Solid Waste Committee meets on
Tuesday, October 13, 2015, 5:30 p.m., room 326.

1 State of Arkansas *As Engrossed: H2/18/15*

2 90th General Assembly

A Bill

3 Regular Session, 2015

HOUSE BILL 1067

4

5 By: Representatives Collins, Davis, *Ballinger, Beck, Bell, Bentley, Cozart, Della Rosa, C. Douglas,*

6 *Eubanks, Gonzales, M. Gray, Hillman, G. Hodges, Ladyman, Leding, Neal, Petty*

7 By: Senator U. Lindsey

8

9

For An Act To Be Entitled

10 AN ACT TO AMEND THE LAWS PERTAINING TO THE
11 PROMULGATION OF WATER QUALITY REGULATIONS AND THE
12 ISSUANCE OF WASTEWATER DISCHARGE PERMITS; TO
13 AUTHORIZE THE IMPLEMENTATION OF NUTRIENT WATER
14 QUALITY TRADING, CREDITS, OFFSETS, AND COMPLIANCE
15 ASSOCIATIONS; AND FOR OTHER PURPOSES.

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Subtitle

19 TO AMEND THE LAWS REGARDING WATER QUALITY
20 REGULATIONS AND WASTEWATER DISCHARGE
21 PERMITS; AND TO AUTHORIZE NUTRIENT WATER
22 QUALITY TRADING, CREDITS, OFFSETS, AND
23 COMPLIANCE ASSOCIATIONS.

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25

26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

27

28 SECTION 1. DO NOT CODIFY. Legislative findings and intent.

29 The General Assembly finds that:

30 (1) Water quality trading is a market-based approach to
31 achieving water quality goals that can provide greater efficiency and cost
32 savings by allowing one (1) source to meet its regulatory obligations by
33 using pollutant reductions created by another source that has lower pollution
34 control costs;

35 (2) Experience in other states has demonstrated that nutrient
36 water quality trading programs, including the use of credits, offsets, and



1 compliance associations, can result in quicker and more efficient achievement
2 of water quality protection goals; and

3 (3) Nutrient water quality trading should be encouraged wherever
4 appropriate and facilitated by the development of applicable regulations and
5 permit terms.

6
7 SECTION 2. Arkansas Code Title 8, Chapter 4, Subchapter 2, is
8 amended to add an additional sections to read as follows:

9 8-4-232. Nutrient water quality trading programs.

10 (a) As used in this section, "nutrient" means a substance assimilated
11 by an organism that promotes growth and replacement of cellular constituents,
12 including without limitation nitrogen, phosphorus, and carbon.

13 (b)(1) The Arkansas Pollution Control and Ecology Commission may adopt
14 regulations that specify requirements, standards, and procedures governing
15 the establishment and implementation of nutrient water quality trading
16 programs, including without limitation program scope, eligibility, and
17 threshold treatment requirements.

18 (2) The nutrient water quality trading programs may include
19 without limitation the following:

20 (A) The establishment and regulation of nutrient water
21 quality trading exchanges;

22 (B) The establishment and regulation of nutrient water
23 quality compliance associations;

24 (C) The authorization and regulation of nutrient water
25 quality trading credits;

26 (D) The authorization and regulation of nutrient water
27 quality offsets; and

28 (E)(i) The establishment of a schedule of user fees to be
29 collected by the Arkansas Department of Environmental Quality from persons or
30 entities utilizing nutrient water quality trades or offsets to comply with
31 permit limits.

32 (ii) The user fees shall be based on a record
33 calculating the reasonable costs to the department of implementing and
34 enforcing each nutrient water quality trading, credit, or offset program.

35 (c) Under regulations adopted by the commission under subsection (b)
36 of this section, the department may:

1 (1) Include terms and conditions in any appropriate permit that
2 allow the eligible permit holder to use water quality trading arrangements
3 such as water quality trading credits and water quality offsets as a means
4 for complying with appropriate nutrient effluent limitations or conditions
5 contained in the permit; and

6 (2) Issue permits to eligible compliance associations as a means
7 for multiple eligible permit holders to collectively satisfy their aggregate
8 permit limits for one (1) or more appropriate nutrient water quality
9 parameters.

10 (d) A nutrient water quality trading program or arrangement
11 established under this section shall provide that a decision to participate
12 in the nutrient water quality trading program or arrangement shall be a
13 matter of voluntary choice on the part of each participant in the nutrient
14 water quality trading program or arrangement.

15
16 8-4-233. Nutrient Water Quality Trading Advisory Panel – Created
17 – Members – Duties.

18 (a) The Nutrient Water Quality Trading Advisory Panel is created,
19 consisting of *nine (9)* members as follows:

20 (1) One (1) member appointed by the President Pro Tempore of the
21 Senate;

22 (2) One (1) member appointed by the Speaker of the House of
23 Representatives;

24 (3) *Seven (7)* members appointed by the Governor as follows:

25 (A) One (1) member to represent agricultural interests;

26 (B) One (1) member to represent forestry interests;

27 (C) One (1) member to represent municipal wastewater
28 treatment facility interests;

29 (D) One (1) member to represent public drinking water
30 supply interests;

31 (E) One (1) member to represent the interests of
32 industries that hold point source wastewater discharge permits; and

33 (F) Two (2) members to represent the interests of
34 environmental organizations regarding water quality.

35 (b)(1) A member shall serve a term of two (2) years or until a
36 successor is appointed.

1 (2) A member may serve successive terms without limitation.

2 (3) If a vacancy occurs, the officer who made the original
3 appointment for that position shall appoint a person who represents the same
4 constituency as the member being replaced.

5 (c)(1) A majority of the members shall constitute a quorum for the
6 transaction of business.

7 (2) Meetings may be conducted with members participating via
8 telephonic or other electronic conferencing methods.

9 (d)(1) The advisory panel shall elect a chair and vice chair.

10 (2) The advisory panel may adopt rules relating to the conduct
11 of its meetings.

12 (e) Members shall serve without compensation but may be reimbursed for
13 expenses in accordance with § 25-16-902, if funds are available.

14 (f) The Arkansas Department of Environmental Quality shall provide
15 meeting space and administrative services for the advisory panel.

16 (g) The advisory panel may:

17 (1) Advise the department and the Arkansas Natural Resources
18 Commission regarding the desirability, design, and operation of nutrient
19 water quality trading programs; and

20 (2) Advise the Arkansas Pollution Control and Ecology Commission
21 and the Arkansas Natural Resources Commission regarding the promulgation of
22 regulations involving nutrient water quality trading programs.

23 (h) The Arkansas Pollution Control and Ecology Commission shall not
24 initiate a rulemaking proceeding to adopt a regulation that authorizes or
25 governs nutrient water quality trading unless:

26 (1) The proposed regulation has been recommended by the advisory
27 panel; or

28 (2) A copy of the proposed regulation has been delivered to the
29 advisory panel at least sixty (60) calendar days before the date the request
30 to initiate the rulemaking is filed with the Arkansas Pollution Control and
31 Ecology Commission.

32 (i) Subsection (h) of this section does not limit the authority of the
33 Arkansas Pollution Control and Ecology Commission to:

34 (1) Alter a proposed regulation at any time during the
35 rulemaking proceeding; or

36 (2) Initiate a rulemaking proceeding if:

1 (A) The members of the advisory panel have not been
2 appointed; or

3 (B) The advisory panel lacks an actively serving quorum.

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5 /s/Collins

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8 **APPROVED: 03/06/2015**

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STATE OF ARKANSAS
**Department of Finance
and Administration**

REVENUE LEGAL COUNSEL

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April 23, 2015

Lynn Hyke
Construction & Contract Manager
113 W. Mountain Street
Fayetteville, Arkansas 72701



Re: Sales/Use Tax – Noland Wastewater Treatment Plant
Opinion 20141010S

Dear Mr. Hyke:

The Department has received a request for a supplement to your Opinion No. 20141010 dated November 13, 2014. The request for a supplemental opinion came from Tim Nyander (Utilities Director), who appears to be a fellow employee in your office. As you are aware, Opinion No. 20141010 (Original Opinion) discussed whether certain components of the new Dissolved Ozone Disinfection System in the Noland Wastewater Treatment Plant qualify as pollution control machinery and equipment under Ark. Code Ann. § 26-52-402(a)(3). As you are aware, Arkansas Gross Receipts Tax Rule GR-66(A) requires the following to prove entitlement to the relevant exemption:

1. The machinery and equipment is utilized, either directly or indirectly, by manufacturing or processing plants or facilities, or cities or towns in Arkansas to prevent or reduce air or water pollution or contamination which might otherwise result from the operation of the plant or facility; and
2. The machinery and equipment is required by Arkansas or federal law or regulations to be installed and utilized to control pollution or contamination as evidenced by written documentation from the Arkansas Department of Environmental Quality or the United States Environmental Protection Agency.

The Original Opinion discussed several categories or items and concluded as follows with respect to each category:

- I. Category One: Ozone Generator Chillers and HVAC equipment that cool the pollution control machinery and equipment. It was decided that these items were not utilized in the treatment process, and, consequently, cannot qualify for the exemption under Ark. Code Ann. § 26-52-402(a)(3).
- II. Category Two: Oxygen Concentrators and Ozone Generators that acquire ozone for injection into wastewater. It was decided that these items were involved in the creation of ozone during the water treatment process for sterilization of the

wastewater during the treatment process and qualified for the exemption under Ark. Code Ann. § 26-52-402(a)(3).

- III. Category Three: Pressurized dissolution tank, submersible pumps, and injection equipment that dissolve ozone in water and mix it in the waste water stream. It was decided that these items were involved in the sterilization of the wastewater during the treatment process and qualified for the exemption under Ark. Code Ann. § 26-52-402(a)(3).
- IV. Category Four: Associated Piping and Pipe Supports that transport oxygen, raw ozone, ozone solution, and cooling water. It was decided that, while piping connecting exempt pieces of machinery would generally be considered component parts of exempt machinery, the actual function of the pieces of piping was uncertain. Consequently, the piping was not considered to qualify for the exemption at that time. Further, it was decided that pipe supports generally do not qualify as component parts of machinery unless the items qualify as special foundations; no evidence was presented to show the items qualified as special foundations; and, consequently, pipe supports cannot qualify for the exemption under Ark. Code Ann. § 26-52-402(a)(3).
- V. Category Five: Machinery that destroys excess ozone produced in the pollution control process. It was decided that the ozone destruction was not part of the water treatment process and, consequently, could not qualify for the exemption under Ark. Code Ann. § 26-52-402(a)(3) unless it was demonstrated that ozone destruction was required under federal or state environmental laws.
- VI. Category Six: Machinery that controls and monitors the wastewater treatment process is specifically excluded from the exemption under Arkansas Gross Receipts Tax Rule GR-66(E)(4) and, consequently, it was determined that these items could not qualify for the exemption under Ark. Code Ann. § 26-52-402(a)(3).

At the time of the Original Opinion request, you were only able to produce an opinion from the Arkansas Department of Environmental Quality (ADEQ) stating that certain properly constructed ozone systems qualify as water disinfection systems. The Original Opinion noted that Arkansas Gross Receipts Tax Rule GR-66(A)(2) generally requires that any exempt pollution control machinery or equipment must be required by state or federal pollution control laws as evidenced by a written letter from either the ADEQ or federal Environmental Protection Agency. The Original Opinion was issued on the condition that your organization obtain an opinion from ADEQ verifying that all of the exempted machinery and equipment is required by state or federal pollution control laws to be installed and utilized in pollution control at the wastewater treatment plant.

You have provided an ADEQ opinion dated March 9, 2015 with your request for a supplemental opinion. The ADEQ opinion states that all of the machinery and equipment listed in your Original Opinion request:

directly or indirectly prevents or reduce [sic] air or water pollution or contamination that might otherwise result from the operation of the plant. This letter therefore serves as written documentation on what specific items are necessary for the prevention or reduction of air or water pollution or contamination that might otherwise result from the operation of the plant.

Your request for a supplemental opinion asks the Department to revisit its Original Opinion in light of the ADEQ opinion.

The ADEQ opinion does not expressly state any particular piece of machinery or equipment is required to be installed and utilized to reduce pollution or contamination under federal or state pollution control laws. The ADEQ opinion limits its conclusory analysis to whether your machinery and equipment is utilized directly or indirectly to prevent or reduce air or water pollution or contamination that might otherwise result from operation of the wastewater treatment plant. The ADEQ then reaches the conclusion that all of your machinery and equipment is utilized directly or indirectly to reduce air or water pollution qualifying that conclusion by explaining that only this office can make a determination regarding the application of the exemption under Ark. Code Ann. § 26-52-402(a)(3). Such analysis is not relevant to the requirement under Arkansas Gross Receipts Tax Rule GR-66(A)(2). You have still failed to provide a statement from ADEQ that any of your machinery and equipment is required by state or federal law to be installed and utilized to prevent or reduce air or water pollution. Consequently, the Department must continue to qualify its determination that the items listed in Categories Two and Three qualify for the exemption.

In your opinion request to ADEQ, you appear to argue that any machinery and equipment necessary to the pollution control process should qualify for the exemption. Please note that the Arkansas Supreme Court expressly rejected your proposed analysis in *Southern Steel & Wire Co. v. Wooten*, 276 Ark. 37, 631 S.W.2d 835 (1982) (providing that machinery and equipment that is necessary to pollution control but does not itself reduce air and/or water pollution or contamination does not qualify for the pollution control exemption). In *Southern Steel*, a taxpayer argued that that it had to install PH recorders to monitor its discharge of waste materials and chemicals in order to be in compliance with state pollution laws. The Arkansas Supreme Court held that the PH recorder (though necessary to the pollution control process) did not qualify for the exemption, stating: "The flaw in this argument is that the PH recorder itself does not 'prevent or reduce air and/or water pollution or contamination.' Its purpose is merely to inform the appellant of the level of pollutants present in the waste water discharge. Appellant can then take corrective action." *Id.* at 42, 631 S.W.2d at 838. That analysis was again followed in *Aluminum Co. of America v. Weiss*, 329 Ark. 225, 946 S.W.2d 695 (1997). In *Aluminum Co. of America*, a taxpayer leased heavy equipment to mitigate environmental damage resulting from mining operations that had been conducted for many years. In denying the pollution control machinery and equipment exemption claim, the Arkansas Supreme Court compared its prior rulings in *Heath v. Research-Cottrell, Inc.*, 258 Ark. 813, 529 S.W.2d 336 (1975) and *Southern Steel* and again explained that the pollution control machinery and equipment exemption solely applies to machinery and equipment that actually mitigates environmental pollution that results from the operation of a plant or

facility and does not apply broadly to exempt anything that might be related pollution control but not actually reducing air and/or water pollution.

This statutory exemption must also be considered in light of the narrow construction that must be applied to all tax exemption cases. *Holbrook v. Healthport, Inc. et al.*, 2014 Ark. 146, 432 S.W.3d 593 (stating: “Furthermore, there is a presumption in favor of the taxing power of the state, and all tax-exemption provisions must be strictly construed against the exemption. [Citation omitted]. Taxation is the rule, and exemption is the exception; therefore, any doubts should be resolved to deny the exemption.”); see also *Ark. Conference Ass’n of Seventh Day Adventist, Inc. v. Benton County Bd. of Equalization*, 304 Ark. 95, 97, 800 S.W.2d 426, 427 (1990); see also *Citifinancial Retail Services v. Weiss*, 372 Ark. 128, 133, 271 S.W.3d 494, 498 (2008); and *Weiss v. Bryce Co., LLC*, 2009 Ark. 412, at 3, 330 S.W.3d 756, 757. To interpret this exemption as broadly as you have proposed would result in a violation of this principle.

The Department (following Arkansas Supreme Court precedent) requires that machinery and equipment must actually be a component part of machinery and equipment that actually mitigates environmental pollution to qualify for the pollution control machinery and equipment exemption. Please note that the Department does not have the authority to administratively expand the scope of an exemption beyond that provided in the statute. Consequently, the regulation must be interpreted narrowly to include only such items as are authorized by the express statutory language and Arkansas Supreme Court precedent.

Under the binding Arkansas Supreme Court precedent, this office was correct in concluding that the ozone generator chillers and HVAC machinery discussed in Category One (which merely cool machinery involved in the pollution control process) could not qualify for the exemption under Ark. Code Ann. §26-52-402(a)(3). Such items do not act in the actual pollution control process. Further, this office was correct in denying the electrical controls and instrumentation in Category Six, which are also not acting in the pollution control process and are expressly excluded from the exemption under GR-66(E)(4).

Several items discussed in the Original Opinion lacked sufficient detail for the Department to reach a conclusion regarding taxability. Those items were discussed in Category Four. Neither your request for a supplemental opinion or the ADEQ opinion provide any additional information regarding the items listed in Category 4. Consequently, the Department will not revise its conclusions regarding Category 4 at this time.

You have also failed to provide any additional proof that the ozone destruction machinery and equipment is required by state or federal pollution control laws to be installed and utilized to control or reduce pollution or contamination that might otherwise result from operation of the wastewater treatment plant. Consequently, the Department will not revise its conclusions regarding Category 5 at this time.

As stated above, you have provided no additional information regarding the items claimed to be exempt in your opinion request or proof that any of the relevant items are

required by state or federal pollution control laws. Consequently, the Department will not revise any of its conclusions in the Original Opinion.

This opinion is based on the facts as set out in your inquiry as those facts are governed by current Arkansas laws, rules, and regulations. Any change in the facts or law could result in a different opinion.

Sincerely,



Todd Evans, Attorney
Revenue Legal Counsel