

RESOLUTION NO. 2021-2181

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, AGREEING TO SETTLEMENT AND DISMISSAL OF THE APPEAL THE CITY OF GOODYEAR FILED CHALLENGING THE TERMS OF AZPDES PERMIT NO. AZ0022357; PROVIDING AUTHORIZATION AND AN EFFECTIVE DATE.

WHEREAS, the city has an Authorization to Discharge under the Arizona Pollutant Discharge Elimination System (the “AZPDES”) Permit issued by Arizona Department of Environmental Quality (ADEQ) (the “Discharge Permit”) permitting discharge of effluent from the City’s 157th Avenue Wastewater Treatment Facility that could not be recharged into the Gila River and into the Buckeye Water Conservation Drainage District canal (the “BID Canal”); and

WHEREAS, because of differences in the requirements for discharging effluent into the Gila River and the requirements for discharging effluent into the BID Canal, for the past few years, the city has been using the BID canal as it sole source for the discharge of effluent; and

WHEREAS, the city received a renewal Discharge Permit, which included substantial modifications from the expiring permit, including reclassification of the BID Canal and the imposition of stringent and onerous requirements for discharging effluent into the BID Canal; and

WHEREAS, city staff objected to the reclassification of the BID canal and various other terms in the renewal permit and obtained authorization to appeal the terms of the renewal Discharge Permit; and

WHEREAS, on May 24, 2021, the Goodyear City Council adopted Resolution 2021-2162 authorizing the retention of outside counsel specializing in environmental law and authorizing the appeal of the renewal Discharge Permit; and

WHEREAS, the city’s outside counsel filed an appeal and requested an administrative hearing, which allowed the city to continue operating under the terms of the expired Discharge Permit; and

WHEREAS, following the filing of the appeal and request for an administrative hearing, numerous informal settlement meetings and discussions were held at the request of the City to discuss the city’s claims; and

WHEREAS, after the final settlement meeting on August 11, 2021, ADEQ agreed to reissue the city’s renewal Discharge Permit with modified terms; and

WHEREAS, while the appeal was pending, a case was winding its way through the courts challenging the rule pursuant to which the BID Canal was reclassified; and

WHEREAS, the modifications to the renewal Discharge Permits included: (i) modifications to testing requirements that applied under the new classification of the BID Canal, which provided the city the most flexibility that provided the city the best chance of meeting the higher standards

for discharges into the BID Canal; modifications to the levels of minerals allowed in the discharges as requested by the City of Goodyear; and terms that would allow lower standards to be imposed if, there was a ruling in the pending case that would result in discharges into irrigation canals being classified such that lower standards applied; and

WHEREAS, after the final settlement meeting on August 11, 2021, a ruling in the pending court case was issued that resulted in the reinstatement of the rules in effect when the city's expiring Discharge Permit was issued; and

WHEREAS, the state has proposed a settlement pursuant to which the state would reissue the renewal Discharge Permit under the same terms as the expired Discharge Permit with both sides to bear their own costs and expenses, including attorney's fees, of the appeal; and

WHEREAS, the renewal Discharge Permit will be in effect for a period of five (5) years for the renewal date; and

WHEREAS, there will be an administrative processing fee for the reissuance of the revised Renewal Discharge Permit; and

WHEREAS, the resolution of the appeal under these terms is in the best interests of the City of Goodyear as it allows the city to continue its operations without the need for any operational changes, eliminates future costs and expenses if the appeal were to continue, and allows staff to focus its time and attention on other operation needs.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:

SECTION 1. SETTLEMENT

The Mayor and Council of the City of Goodyear hereby agree to settle and dismiss the appeal the City of Goodyear filed challenging the terms of AZPDES permit No. AZ0022357 pursuant to ADEQ's agreement to reissue the city's permit with the terms set forth in the draft letter from ADEQ attached hereto as Exhibit A, with each side to bear their own attorneys' fees, consultants' fees and costs of the appeal.

SECTION 2. AUTHORIZATION

The City Attorney or his designee, which includes outside counsel retained to represent the City of Goodyear in the appeal filed challenging the terms of the AZPDES permit No. AZ0022357, is hereby authorized to take all actions and execute all documents necessary to carry out the intent of this Resolution.

SECTION 3. EFFECTIVE DATE

This resolution shall be effective upon its adoption by the Mayor and Council of the City of Goodyear.

PASSED AND ADOPTED by the Mayor and Council of the city of Goodyear, Maricopa County, Arizona, by a _____ vote, this _____ day of _____, 20 ____.

Georgia Lord, Mayor

Date: _____

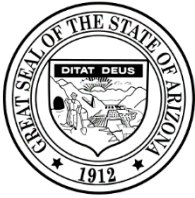
ATTEST:

APPROVED AS TO FORM:

Darcie McCracken, City Clerk

Roric Massey, City Attorney

(Exhibit 'A' on the following page)



Douglas A. Ducey
Governor

EXHIBIT 'A'
ARIZONA DEPARTMENT
OF
ENVIRONMENTAL QUALITY



Misael Cabrera
Director

Via Email

September __, 2021

LTF ID: 86573

City of Goodyear
Attn.: Todd Carpenter
P. O. Box 5100
Goodyear, AZ 85338
(Sent Via Email)

Re: AZPDES Permit No. AZ0022357 City of Goodyear 157th Ave Water Reclamation Facility (WRF)

Dear Todd Carpenter:

On April 1, 2021, the Arizona Department of Environmental Quality (ADEQ) granted the renewal of the City of Goodyear WRF AZPDES permit No. AZ0022357 ("Permit"). During public participation and comment period for the above-referenced permit, comments were received from Todd Carpenter, acting on behalf of the City of Goodyear 157th Ave. On June 3, 2021, a formal appeal was filed by the City of Goodyear challenging the Permit's requirements related to the application of the Navigable Waters Protection Rule in Arizona. On Monday, August 30, 2021, a District Judge for the District of Arizona in *Pasqua Yaqui Tribe et. al. v. EPA*, No. CV-20-00266-TUC-RM issued an order to vacate and remand the Navigable Waters Protection Rule. This order has the effect of setting Clean Water Act regulations in Arizona to those in place pre-2015. A copy of the order is available here: https://static.azdeq.gov/wqd/swpp/order_rem_and_vacate.pdf.

ADEQ intends to revise the Permit consistent with current state and federal requirements, with the following conditions and parameter changes:

- Returning to the previous permit's receiving water of the Buckeye Canal and its associated Agricultural Designated Uses.
- The sampling point for hardness, pH, and temperature will return to the point of discharge to the canal rather than monitoring being required further downstream.
- No requirements for Whole Effluent Toxicity (WET) testing.
- Selenium effluent limitations to be revised to be consistent with the Middle Gila River Boron and Selenium TMDL WLA previously in place.

ADEQ intends to provide the City of Goodyear with the revised permit in the coming weeks for your review during the internal/external review period, prior to public noticing the revised permit. Your issued and signed revised permit will be emailed immediately after the director signs the revised permit.

Please contact me at (602) 771-4162 or e-mail me at montague-breakwell.chris@azdeq.gov if you have any questions regarding this notice or your permit.

Sincerely,

Chris Montague-Breakwell
Environmental Program Manager 2
Water Quality Division

Electronic cc: Justin Bern, WQD-SWP Value Stream Manager
Jessica Kohls, Permit Writer
Adam Swartz, AGO
Christopher Thomas, Perkins Coie