

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Poyen
P.O. Box 248
Poyen, AR 72128

LIS No. 22-002
Permit No. AR0048445
AFIN 27-00043

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 Poyen (Respondent) and the Division of Environmental Quality¹ (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 South Birch Street, Poyen, Grant County, Arkansas.
2. Respondent discharges treated wastewater to an unnamed tributary of Big Creek, thence to Big Creek, thence to Francois Creek, thence to Saline River, thence to the Ouachita River in Segment 2C of the Ouachita River Basin.

¹ Pursuant to Act 910 of 2019, the Arkansas Transformation and Efficiencies Act, the former Arkansas Department of Environmental Quality is now the Division of Environmental Quality in the newly created Department of Energy and Environment.

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 AR0048445 (“Permit”) to Respondent on January 27, 2021. The Permit became effective on February 1, 2021, and expires on January 31, 2026.
10. On April 7, 2021, DEQ received a public complaint that the levees at the wastewater treatment plant did not have adequate freeboard and frequently overflowed resulting in untreated or partially treated wastewater leaving the plant.

11. On April 12, 2021, and May 5, 2021, DEQ conducted a reconnaissance inspection of the facility. During the inspection, DEQ documented the following violations:

- a. DEQ observed unpermitted discharge/overflow on the eastern levee of the primary lagoon and on the western levee of the oxidation pond. Respondent is permitted to discharge treated wastewater from its permitted Outfall. Respondent is not permitted to discharge untreated or partially treated wastewater from the primary lagoon or the oxidation pond. These unpermitted discharges are a violation of Ark. Code Ann. § 8-4-217(b)(1)(E) and therefore are a violation of Ark. Code Ann. § 8-4-217(a)(3).
- b. The flow meter displayed an “ERROR” message and did not indicate an accurate flow measurement. This is a violation of Part III, Section C.2 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
- c. DEQ observed the following Operation and Maintenance violations that violate Part III, Section B.1 of the Permit and therefore are violations of Ark. Code Ann. § 8-4-217(a)(3):
 - i. Overgrown and neglected vegetation along both the primary lagoon and the oxidation pond;
 - ii. Less than two (2) feet of freeboard on both the primary lagoon and the oxidation pond; and
 - iii. Blower lines located in the aeration basin were not maintained and only two of the three lines were operable.

12. On June 10, 2021, DEQ notified Respondent of the inspection results via certified letter and requested that Respondent submit a written response to the violations cited in the inspection report..

13. On June 25, 2021, Respondent submitted a response to the violations cited in the inspections performed on April 12, 2021, and May 5, 2021. The response included photographic documentation that the vegetation along the primary lagoon and the oxidation pond had been removed.

14. On June 28, 2021, DEQ performed a review of the certified Discharge Monitoring Reports submitted by Respondent in accordance with the Permit.

15. 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 April 1, 2016, through March 31, 2021:

- a. Twelve (12) violations of Ammonia Nitrogen;
- b. Five (5) violations of Total Suspended Solids;
- c. Two (2) violations of Fecal Coliform Bacteria; and
- d. One (1) violation of pH.

16. Each of the twenty (20) discharge limitation violations listed in Paragraph 15 above constitutes a separate permit violation for a total of twenty (20) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

17. On June 28, 2021, DEQ sent Respondent a letter requesting a Corrective Action Plan (CAP) to address the effluent discharge limitation violations and the violations cited during the inspections on April 12, 2021, and May 5, 2021. The CAP was to have a milestone schedule and

a final date of compliance and be certified by a Professional Engineer (P.E.) licensed in the state of Arkansas.

18. On July 27, 2021, Respondent submitted a CAP to DEQ with final compliance date of September 30, 2023.

19. On August 6, 2021, DEQ sent Respondent a letter approving the CAP submitted by Respondent on July 27, 2021.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. 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.
2. Within sixty (60) calendar days of the effective date of this Order, Respondent shall submit an interim operating plan that describes, in detail, the operational measures that will be undertaken to stop the unpermitted discharge observed at the wastewater treatment plant during the inspections performed on April 12, 2021, and May 5, 2021. Respondent shall implement the interim operating plan immediately upon its submittal to DEQ.
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 final permitted effluent limits set forth in Part I, Section A of the Permit. Respondent shall submit the final compliance report by September 30, 2023.
4. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Three Thousand Six Hundred Dollars (\$3600.00), of which Two Thousand Six Hundred Dollars (\$2600.00) 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 Two Thousand Six Hundred Dollars (\$2600.00) 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 Three Thousand Six Hundred Dollars (\$3600.00) 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

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

13. 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 3rd DAY OF January, 2021. 2022


JULIE LINCK, ADMINISTRATOR OF THE ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

City of Poyen

BY: Brian Scott Riggan
(Signature)

Brian Scott Riggan
(Typed or printed name)

TITLE: Mayor

DATE: 10-13-2021

TOWN OF POYEN, INCORPORATED
POYEN, ARKANSAS

City Council Meeting Minutes

Date: November 22, 2021

Meeting Place & Time: City Hall at 7:00 p.m.

Type of Meeting : Regular City Council Meeting

Members present:
Alderman Chris Efir
Alderman David Elrod
Alderman Bob McAlister
Alderman Ken Cullen

Members absent:

Mayor Scott Riggan called the meeting to order.

Alderman Rodney Walker resigned from the Council, as he has moved out of the Poyen town limits.

Mayor Riggan presented Ken Cullen to fill one of the two open Alderman positions. Alderman Chris Efir made a motion to accept Ken Cullen in Alderman Position #4. Alderman David Elrod seconded the motion, with an all in favor vote.

Mayor Riggan presented the proposed General & Street Fund budgets for 2022. Alderman David Elrod made a motion to pass **Resolution 21-04** which approves the above stated budgets. Alderman Chris Efir seconded the motion, with an all in favor vote.

Mayor Riggan presented the proposed Water & Sewer budgets for 2022. Alderman Chris Efir made a motion to pass **Resolution 21-05** which approves the above stated budgets. Alderman Ken Cullen seconded the motion, with an all in favor vote.

Mayor Scott Riggan gave an update on the ADEQ violations and findings report. The Town of Poyen was fined \$1,000.00 for the violations and was given an enforcement action plan. Further fines may be levied based on the Town of Poyen's compliance with the proposed repairs. Alderman Chris Efir made a motion to allow Mayor Riggan to sign the Consent Admin Order. Alderman David Elrod seconded the motion, with an all in favor vote.

Open Discussion included the following:

1. The repairs to the City Hall building entrance had been fully completed.
2. The grant for sewer upgrades is still pending the spending guidelines being approved.
3. Kevin Conner has resigned from the Poyen Sports Association and Park Board. No payment has been received for the bill presented for grass and field upkeep provided by Mayor Riggan due to upkeep not being done as agreed upon by the Poyen Sports Association.
4. Fire Chief Dennis Finley presented a possible Duramax diesel at Massey's Motors for a brush truck for the Fire Dept. Council does not want a diesel engine due cost of engine upkeep.
5. General Fund received \$5,250.00 from proceeds of local sales tax.
6. Fire Dept Funds received \$8,250.00 from proceeds of local sales tax. An additional \$3,000 was given this year as a supplemental assistance.
7. Reduction of paper handouts given to Council members at each meeting will be implemented beginning January 2022. Copies of bank statements will no longer be given unless requested. Only a copy of the previous month's minutes and bank credit and expenditure totals will be given.

Per an earlier motion, a purchase was made from the Arkansas Forestry Commission for a new skid 250 gallon unit pump with foam. Pump is new and still in crate. Purchase price will be \$11,900.00. The Arkansas Forestry Commission will hold the pump for pickup until 12-8-2021.

Alderman David Elrod made a motion to pay one time salary increases for the following:

Clint Walker - 1 week pay deducted from the Street Fund

Scott Riggan - 1 month pay deducted from the General Fund

Amanda Efird - 1 month pay deducted from the General Fund

Alderman Ken Cullen seconded the motion, with an all favor vote.

Minutes and bank expenditures/deposits for September & October 2021 were presented by Treasurer Amanda Efird; a motion to approve was made by Alderman Chris Efird, Alderman David Elrod seconded the motion, with an all in favor vote.

Alderman Chris Efird made a motion to adjourn; Alderman David Elrod seconded the motion with an all in favor vote.

Recorder



Amanda Efird

Mayor



Brian Scott Riggan