

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT  
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Imboden  
P.O. Box 7  
Imboden, AR 72434

LIS No. 22- 060  
Permit No. AR0021628  
AFIN 38-00036

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 Imboden (Respondent) and the Division of Environmental Quality<sup>1</sup> (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 off of Highway 63, Imboden, Lawrence County, Arkansas.
2. Respondent discharges treated wastewater to Wayland Creek, then to the Spring River, then to the Black River, then to the White River in Segment 4H of the White River Basin.

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<sup>1</sup> 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 AR0021628 (“Permit”) to Respondent on August 26, 2013. The Permit became effective on October 1, 2013, and expired on September 30, 2018. The Renewal Permit was issued on January 15, 2020. The Permit became effective on February 1, 2020, and expires on January 31, 2025.

10. On October 5, 2017, DEQ conducted a review of the certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.

11. 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 1, 2014, through August 31, 2017:

- a. Eight (8) violations of Total Suspended Solids;
- b. Two (2) violations of Dissolved Oxygen; and
- c. One (1) violation of Carbonaceous Biochemical Oxygen Demand.

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

13. On October 6, 2017, DEQ sent Respondent a certified letter requesting a Corrective Action Plan (CAP) to address the violations of the permitted effluent discharge limitations. The CAP was to have a milestone schedule, final date of compliance, and be certified by a Professional Engineer (P.E.) licensed in the state of Arkansas.

14. On November 29, 2017, Respondent submitted a CAP to DEQ. The CAP had a final compliance date of August 1, 2018.

15. On November 30, 2017, DEQ notified Respondent via certified letter that the CAP dated November 29, 2017, was approved with the following comment:

- a. Submit a certification of compliance to DEQ by August 30, 2018, signed by a P.E., stating that the corrective actions listed in the CAP submitted on November 29, 2017, have been completed and that Respondent is in compliance with the effluent limits of the Permit.

16. On August 29, 2018, Respondent submitted a CAP progress report detailing the corrective actions taken to achieve compliance with the effluent discharge limitations in the Permit.

17. On October 12, 2018, Respondent submitted a revised CAP to DEQ. The revised CAP had a final compliance date of July 1, 2019.

18. On November 6, 2018, DEQ notified Respondent via letter that the revised CAP, dated October 12, 2018, was approved with the following comment:

- a. Continue implementing the corrective actions in accordance with the milestone schedule in the revised CAP submitted to DEQ on October 12, 2018; and
- b. Submit a certification of compliance or a revised CAP, prepared by a PE. licensed in the state of Arkansas, to DEQ by July 31, 2019.

Respondent submitted neither the certification of compliance nor the revised CAP to DEQ by July 31, 2019.

19. On September 23, 2021, DEQ conducted a review of the certified DMRs submitted by Respondent in accordance with the Permit.

20. 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 July 31, 2019, through July 31, 2021:

- a. Eleven (11) violations of Total Suspended Solids;
- b. Five (5) violations of Fecal Coliform Bacteria;
- c. Five (5) violations of Carbonaceous Biochemical Oxygen Demand;
- d. Three (3) violations of Ammonia Nitrogen;
- e. Three (3) violations of Dissolved Oxygen; and

- f. Two (2) violations of pH.
21. Each of the twenty-nine (29) discharge limitation violations listed in Paragraph 19 above constitutes a separate permit violation for a total of twenty-nine (29) separate violations of Ark. Code Ann. § 8-4-217(a)(3).
22. On September 30, 2021, Respondent and DEQ met to discuss the effluent violations reported by Respondent and DEQ's request for Respondent to develop a revised CAP.
23. On October 1, 2021, DEQ sent Respondent a letter requesting a CAP to address the violations of the permitted effluent discharge limitations. The CAP was to have a milestone schedule, final date of compliance, and be certified by a P.E. licensed in the state of Arkansas.
24. On November 3, 2021, Respondent submitted a revised CAP to DEQ. The November 2021 revised CAP had a final compliance date of November 30, 2023.
25. On November 10, 2021, DEQ notified Respondent via letter that the revised CAP dated November 3, 2021, was approved.

#### **ORDER AND AGREEMENT**

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall comply with the terms, milestone schedule, and final compliance date of November 30, 2023, contained in the approved revised CAP submitted on November 3, 2021. The milestone schedule and final compliance date of November 30, 2023, shall be fully enforceable as terms of this Order.
2. 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 December 31, 2023.

3. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Four Thousand Eight Hundred Dollars (\$4800.00), or one-half of the full civil penalty of Two Thousand Four Hundred Dollars (\$2400.00) if this Order is signed and returned to the Office of Water Quality Enforcement Branch, DEQ, 5301 Northshore Drive, North Little Rock, Arkansas, 72118-5317, within twenty (20) calendar days of receipt of this Order. Payment 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

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



12. 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 24<sup>TH</sup> DAY OF May, 2022.

  
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JULIE LINCK, CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

City of Imboden

BY:   
\_\_\_\_\_  
(Signature)

Chris Jones  
\_\_\_\_\_  
(Typed or printed name)

TITLE: Mayor  
\_\_\_\_\_

DATE: 5-9-22  
\_\_\_\_\_

RESOLUTION NO. 2022-7

TOWN OF IMBODEN, ARKANSAS

**A RESOLUTION APPROVING AND AUTHORIZING THE  
MAYOR OF THE TOWN OF IMBODEN TO EXECUTE A  
CONSENT ADMINISTRATIVE ORDER WITH THE DIVISION OF  
ENVIRONMENTAL QUALITY TO SETTLE CERTAIN  
VIOLATIONS REGARDING THE DISCHARGE OF WASTE WATER**

WHEREAS, the Town of Imboden operates a minor municipal wastewater treatment facility;

WHEREAS, the Division of Environmental Quality determined that the Town of Imboden violated certain permitted effluent discharge limits set forth in the permit issued to the Town of Imboden;

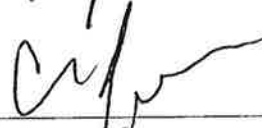
WHEREAS, the Town of Imboden has received a *Consent Administrative Order* from the Division of Environmental Quality whereby the Division of Environmental Quality and the Town of Imboden agree that certain violations have occurred and agree to a reduced civil penalty in exchange for the execution of the *Consent Administrative Order*; and

WHEREAS, the City Council for the Town of Imboden desires that the Mayor be authorized to enter into this *Consent Administrative Order* with the Division of Environmental Quality as the City Council finds that entering in this *Consent Administrative Order* would be in the best interests of the citizens of the Town of Imboden.

NOW, THEREFORE, BE IT RESOLVED, the Mayor of Imboden, Arkansas, on behalf of the Town of Imboden, Arkansas, is authorized to enter into and execute and deliver the *Consent Administrative Order* attached hereto as Exhibit "A" with the

Division of Environmental Quality to receive a reduced civil penalty and to take all other action required hereto.

PASSED and APPROVED this 9 May day of May, 2022.

  
\_\_\_\_\_  
Chris Jones, Mayor

Attested To:

  
\_\_\_\_\_  
Brenda Chappell  
City Clerk