

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT  
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Wabbaseka  
P.O. Box 141  
Wabbaseka, AR 7217

LIS No. 23- *023*  
Permit No. AR0039896  
AFIN 35-00180

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 Wabbaseka (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 1.5 miles southwest of Wabbaseka along Blue Rock Road, Wabbaseka, Jefferson County, Arkansas.
2. Respondent discharges treated wastewater to Lateral No. 2, thence to Bradley Slough, thence to Boggy Bayou, thence to Wabbaseka Bayou, thence to the Arkansas River in Segment 3A 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 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 AR0039896 (“Permit”) to Respondent on March 29, 2016. The Permit became effective on April 1, 2016, and expired on March 31, 2021.

10. On March 18, 2021, Respondent and DEQ entered into Consent Administrative Order 21-023 (“CAO LIS 21-023”) for failure to submit a timely permit renewal application, failure to pay

annual permit fees, and failure to submit Discharge Monitoring Reports (DMRs). CAO LIS 21-023 authorizes Respondent to operate the Facility until DEQ issues a renewal Permit and requires Respondent to comply with the expired Permit until the effective date of the renewal Permit.

11. On August 19, 2022, DEQ conducted a review of certified DMRs submitted by Respondent in accordance with the Permit.

12. 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 June 1, 2019, through June 30, 2022:

- a. Eighteen (18) violations of Total Suspended Solids;
- b. Six (6) violations of Fecal Coliform Bacteria;
- c. Five (5) violations of pH;
- d. Two (2) violation of Biochemical Oxygen Demand;
- e. One (1) violation of Ammonia Nitrogen; and
- f. One (1) violation of dissolved Oxygen.

13. Each of the thirty-three (33) discharge limitation violations listed in Paragraph 12 above constitutes a separate permit violation for a total of thirty-three (33) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

14. The review of the DMRs also revealed that Respondent submitted late DMRs for the following monitoring periods:

- a. 2021: January, February, March, April, June, October, November, and December.

- b. 2022: January, February, March, May, June, July, August, September, October, and November.

Failure to submit DMRs with the monitoring results obtained during the previous 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).

15. The review of the DMRs further revealed that Respondent failed to conduct analysis for the monitoring period of March 2021. Failure to monitor the effluent in accordance with the requirements set forth in Part I, Section A the Permit is a violation of Part I, Section A of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

#### Failure to Pay Annual Permit Fees

16. DEQ is authorized by Ark. Code Ann. § 8-1-103 to charge fees for issuance, modification, and annual review of permits. APC&EC Rule 9.301(D) provides:

A permitted facility failing or refusing to pay the annual fee in a timely manner shall be subject to a late payment charge as established in these regulations. Continued refusal to pay the required fees after a reasonable notice shall constitute grounds for legal action by the Division, which may result in revocation of the permit.

17. On September 8, 2021, DEQ issued invoice number PDS-189679 for annual fees for NPDES Permit Number AR0039896 with the amount due of Eight Hundred Thirty-six Dollars (\$836.00). On October 18, 2021, Respondent paid One Hundred Dollars (\$100.00) towards the balance of invoice number PDS-189679. Respondent has not remitted the remainder of the balance for invoice number PDS-189679.

18. Respondent failed to pay the remaining annual fees from invoice number PDS-189679. The total amount due and owing for invoice number PDS-189679 is Seven Hundred Thirty-six Dollars (\$736.00). Failure to comply with all applicable permit fee requirements is a violation of Part III, Section A, Condition 11 of the Permit and APC&EC Rule 9.301(D) and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

### **ORDER AND AGREEMENT**

WHEREFORE, the parties stipulate and agree as follows:

1. Within ninety (90) calendar days of the effective date of this Order, Respondent shall submit to DEQ, for review and approval, a comprehensive Corrective Action Plan (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 the Findings of Fact and prevent future violations. The CAP shall also include a reasonable milestone schedule with a date of final compliance no later than December 31, 2025. Upon review and approval by DEQ, Respondent shall comply with the terms, milestone schedule, and final compliance date contained the approved CAP. The milestone schedule and final compliance date 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, 2025.

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

4. Respondent shall remit all fees as required by the Permit, APC&EC Rule 9, and the Act.

5. On or before the effective date of this Order, Respondent shall pay the remaining balance of invoice number PDS-189679 in the amount of Seven Hundred Thirty-six Dollars (\$736.00).

The total amount shall be made payable to the Division of Environmental Quality and mailed to:

DEQ, Fiscal Division  
**PDS-189679**  
5301 Northshore Drive  
North Little Rock, AR 72118-5317

6. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Three Thousand Four Hundred Fifty Dollars (\$3450.00), of which Two Thousand Nine Hundred Fifty Dollars (\$2950.00) 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 Two Thousand Nine Hundred Fifty Dollars (\$2950.00) 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 Four Hundred Fifty Dollars (\$3450.00) shall be payable immediately to DEQ. Payment of the civil penalty in the amount of Five Hundred Dollars (\$500.00) 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 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.

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 14<sup>TH</sup> DAY OF MARCH, 2023.



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

APPROVED AS TO FORM AND CONTENT:

City of Wabbaseka

BY: Andrew Goodloe  
(Signature)

ANDREW GOODLOE  
(Typed or printed name)

TITLE: MAYOR

DATE: 3-13-23

RESOLUTION No. 2023-2

A RESOLUTION AUTHORIZING THE CITY OF Wabbaseka TO ENTER INTO A CONSENT ADMINISTRATIVE ORDER WITH THE ARKANSAS DEPARTMENT OF ENERGY & ENVIRONMENT, DIVISION OF ENVIRONMENTAL QUALITY (DEQ)

WHEREAS it is in the best interests of the City to enter into an agreement with DEQ and to comply with the provisions of the Arkansas Water and Air Pollution Control Act listed in the attached Consent Administrative Order

WHEREAS the Mayor and Public Works Director or other designated person, working with professional engineers, have developed a plan of action to address the issues listed in the proposed Consent Administrative Order

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF Wabbaseka

- 1. That the proposed Consent Administrative Order is a legal document and approved by the City Council of the City of Wabbaseka
- 2. That the City Council of the City of Wabbaseka authorizes the Mayor to sign the proposed Consent Administrative Order
- 3. That the City Council of the City of Wabbaseka authorizes the Mayor and Treasurer to expend funds for completion of activities required by the proposed Consent Administrative Order including but not limited to the payment of a civil penalty as set out in the proposed Consent Administrative Order

Enacted this 9th day of February 2023

APPROVED: Andrew Goodloe  
Mayor

Jerry M. Moore  
TOWN CLERK