

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT  
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Joiner  
104 Gin Street  
Joiner, AR 72350

LIS No. 23- 038  
Permit No. AR0022152  
AFIN 47-00141

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 Joiner (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 at 6998 South County Road 243, Joiner, Mississippi County, Arkansas.
2. Respondent discharges treated wastewater to Ditch No. 4, thence to Frenchmans Bayou, thence to Bellhammer Slough, thence to Big Creek, thence to the Tyronza River, and thence to the St. Francis River in Segment 5A of the St. Francis 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 a 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.”

### **City of Joiner**

9. DEQ issued NPDES Permit Number AR0022152 (“Permit”) to Respondent on January 31, 2022, with an effective date of February 1, 2011. DEQ issued renewal Permits on September 30, 2016 and September 27, 2021. The current Permit became effective on October 1, 2021, and has an expiration date of September 30, 2026.

10. On April 22, 2016, DEQ and Respondent entered into Consent Administrative Order LIS 16-028 (CAO LIS 16-028) to address Respondent’s violations of the permitted effluent limitations.

11. On December 15, 2017, DEQ and Respondent agreed to amend CAO LIS 16-028 and entered into Amended CAO LIS 16-028-001 to extend the time for Respondent to achieve compliance.

12. On September 1, 2020, DEQ and Respondent agreed to amend CAO LIS 16-028, as amended by CAO LIS 16-028-001, and entered into Amended CAO LIS 16-028-002 to extend the time for Respondent to achieve compliance.

13. On June 9, 2021, DEQ performed a Reconnaissance Inspection of the facility. The inspection revealed the following violations.

- a. A high accumulation of duckweed was observed in the lagoon.
- b. An accumulation of vegetation was observed around the lagoon levee, especially at the outfall structure.
- c. The chlorine contact chamber was in need of repair and cleaning.

These conditions violated Part III, Section B, Condition 1 of the Permit and therefore violated Ark. Code Ann. § 8-4-217(a)(3).

14. On October 7, 2021, DEQ notified Respondent of the inspection results via letter and requested a written response addressing the violations be submitted to DEQ by October 25, 2021.

15. On January 19, 2022, DEQ and Respondent met via video conferencing platform to discuss multiple compliance issues. During the meeting, DEQ and Respondent discussed the following violations and compliance issues:

- a. Respondent did not have a Class III wastewater operator licensed in the state of Arkansas. Per Part II, Condition 1 of the Permit, Respondent is to have, at minimum, a Class III wastewater operator licensed in the state of Arkansas. This

failure is a violation of Part II, Condition 1 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

- b. Respondent had not submitted a response to the violations cited during the June 9, 2021 inspection.
- c. The final compliance date for CAO LIS 16-028-002 was December 31, 2021. Therefore, the Order would need to be amended to allow additional time to achieve compliance with the effluent limitations of the Permit.
- d. Respondent informed DEQ that it was in the process of taking over the City of Bassett's wastewater treatment facility and was currently operating that treatment system. DEQ requested that Respondent submit documentation demonstrating that Respondent had legal authority to operate that system and advised Respondent that it would be required to submit paperwork to transfer the City of Bassett's NPDES permit.

16. On February 11, 2022, Respondent submitted the payment required for renewal of the wastewater license for their contract wastewater operator.

17. On March 10, 2022, DEQ performed a Reconnaissance Inspection of the facility. The following violations were observed:

- a. The western levee was severely eroded and was causing an unpermitted discharge of partially treated wastewater. This unpermitted discharge is a violation of Ark. Code Ann. § 8-4-217(b)(1) and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
- b. The levees were degraded in several areas, indicating lack of proper maintenance. The failure to operate and maintain the levee properly is a violation of Part III,

Section B, Condition 1 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

- c. Respondent did not report the unpermitted discharge to DEQ. Failure to report the unpermitted discharge is a violation of Part III, Section D, Condition 6 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
- d. The lagoons had less than two (2) feet of freeboard. Ten State Standards, Section 93.415 requires a minimum of two (2) feet of freeboard for lagoons.<sup>1</sup>

18. On April 14, 2022, DEQ notified Respondent of the inspection results via letter and requested a written response addressing the violations be submitted to DEQ within thirty (30) days of receiving the letter.

19. On April 14, 2022, Respondent also submitted the Claim of Deed and Ordinances for the City of Bassett.

20. On April 15, 2022, Respondent submitted a request to amend CAO LIS 16-028, as amended by CAO LIS 16-028-001, as amended by CAO LIS 16-028-002. The request included a revised milestone schedule and final compliance date of December 31, 2022.

21. On April 15, 2022, Respondent also submitted a response to the June 9, 2021 inspection to DEQ. The response contained photographs of the treatment plant lagoons and a contract for the licensed wastewater operator. The response discussed the repairs to the weir and removal of the vegetation. However, Respondent did not address the repairs needed to the chlorine contact chamber.

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<sup>1</sup> Rule 6.202(B) states in part:

The basic design criteria for wastewater treatment plants in the State of Arkansas should be based on the latest edition of the "Recommended Standards for Sewage Works," published by the Great Lakes-Upper Mississippi Board of State Sanitary Engineers known as 10 States Standards...

22. On April 22, 2022, Respondent submitted a letter to DEQ regarding the unpermitted discharge that resulted from the erosion of the pond levee. The letter included photographs of the unpermitted discharge and discussed long-term corrective actions planned to address the pond levees.

23. On May 6, 2022, Respondent submitted another response to the March 10, 2022 inspection. The response stated that the water level in the pond was drained so that it was no longer flowing through the hole in the levee. Respondent also discussed options for funding for the long-term repair.

24. On August 25, 2022, DEQ conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.

25. 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 1, 2019, through June 30, 2022:

- a. Twenty-three (23) violations of Total Suspended Solids;
- b. Eighteen (18) violations of Dissolved Oxygen;
- c. Nine (9) violations of Carbonaceous Biochemical Oxygen Demand;
- d. Six (6) violations of Fecal Coliform Bacteria;
- e. Five (5) violations of Ammonia Nitrogen; and
- f. One (1) violation of pH.

26. Each of the sixty-two (62) discharge limitation violations listed in Paragraph 25 above constitutes a separate permit violation for a total of sixty-two (62) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

27. On September 26, 2022, Respondent submitted a document detailing the Best Management Practice for Total Residual Chlorine Reduction at the facility. Respondent is working with an engineer to develop facility improvements, including improvements or best management practices to meet the total residual chlorine limit. Included in the document was an updated milestone schedule with a final compliance date of June 30, 2024.

**City of Bassett**

28. DEQ issued NPDES Permit Number AR0046272 (“Bassett Permit”) to the City of Bassett on December 27, 2018. The Bassett Permit became effective on February 1, 2019, and expires on January 31, 2024.

29. On May 13, 2021, DEQ issued invoice number PDS-187375 for annual fees for NPDES Permit Number AR0046272 with the amount due of Three Hundred Forty Dollars (\$340.00).

30. City of Bassett failed to pay invoice number PDS-187375 for the Bassett Permit by the due date, and a late payment charge of Thirty-four Dollars (\$34.00) accrued in accordance with APC&EC Rule 9.301.

31. As of this date, City of Bassett and Respondent have failed to pay invoice number PDS-187375, including the late payment charge. The total amount due and owing for invoice PDS-187375 is Three Hundred Seventy-four dollars (\$374.00). Failure to remit fees is a violation of Part III, Section A, Condition 11 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

32. On June 16, 2022, Respondent submitted a Permit Transfer Form to obtain the Bassett Permit for the City of Bassett wastewater treatment facility.

33. Pursuant to Ark. Code Ann. § 8-4-203(h)(1), the applicant for a permit transfer is obliged to “[e]nsure that all past and currently due annual permit fees ... have been paid.” Pursuant to Ark.

Code Ann. § 8-4-203(h)(2), the failure to pay past and currently due annual permit fees is a basis for denial of a permit transfer.

34. Pursuant to Ark. Code Ann. § 8-4-203(h)(1), Respondent is responsible for ensuring that those fees are paid.

35. On August 18, 2022, Respondent submitted a Change of Authorization Request to DEQ for Respondent's officials to be named as the Responsible Official and Cognizant Official for the Bassett Permit.

36. On August 26, 2022, DEQ performed a review of the DMRs submitted in accordance with the Bassett Permit for the City of Bassett. The review of the DMRs revealed that City of Bassett and Respondent failed to submit DMRs for the following monitoring periods: June 1–30, 2022, and July 1–31, 2022. The 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 Bassett Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

37. On October 20, 2022, DEQ notified Respondent that the Responsible Official and Cognizant Official for the Bassett Permit had been updated as requested by Respondent in its Change of Authorization Request.

### **ORDER AND AGREEMENT**

WHEREFORE, the parties stipulate and agree as follows:

1. Upon the effective date of this Order, CAO LIS 16-028, as amended by CAO LIS 16-028-001, as amended by CAO LIS 16-028-002, shall be closed.
2. On or before the effective date of this Order, Respondent shall submit to DEQ, for review, a report detailing the corrective actions contained in the revised milestone schedule dated



September 26, 2022, including an evaluation to determine whether a state construction permit is necessary for each of the proposed corrective actions.

3. Respondent shall comply with the terms contained in the revised milestone schedule dated September 26, 2022. The revised milestone schedule and final compliance date of December 31, 2024, shall be fully enforceable as terms of this Order.

4. 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, 2024. The final compliance report shall contain a certification of compliance from a Professional Engineer (P.E.) licensed in the state of Arkansas stating that the corrective actions listed in the revised milestone schedule dated September 26, 2022, have been completed and that Respondent is in compliance with the Permit.

5. Respondent shall submit an interim operating plan within sixty (60) days of the effective date of this Order that describes, in detail, the operational measures that will be undertaken to maximize the removal efficiency of all pollutants covered by this Permit. The interim operating plan shall also include an Operation and Maintenance Manual that includes a schedule for routine maintenance. Respondent shall implement the interim operating plan immediately upon its submittal to DEQ.

6. Within sixty (60) days of the effective date of this Order, Respondent shall submit a certification of compliance from a P.E. licensed in the state of Arkansas certifying that the levee is no longer degraded, has been repaired in accordance with the 10 State Standards, and is functioning to full capability. If unable to submit a certification of compliance, Respondent shall

submit a Levee Corrective Action Plan (LCAP) developed by a P.E. licensed in the state of Arkansas. The LCAP shall include, at minimum, the methods and best available technologies that will be used to repair the levee to meet 10 State Standards. The LCAP shall include a reasonable milestone schedule with a date of final compliance no later than June 1, 2024.

7. On or before the effective date of this Order, Respondent shall submit to DEQ, a Chlorine Contact Chamber Corrective Action Report (“Report”) and P.E. certification. The Report shall include the corrective actions taken to repair the chlorine contact chamber to original design working order and P.E. certification of the corrective actions. The Report shall also include photographic documentation.

8. On or before the effective date of this Order, Respondent shall submit to the Enforcement Branch of the DEQ Office of Water Quality the DMRs for the City of Bassett referenced in Findings of Fact Paragraph 36 and any other DMRs that have become due to DEQ but have not already been submitted. Respondent shall submit all DMRs in accordance with Part III, Section C, Condition 5 of the Permit.

9. On or before the effective date of this Order, Respondent shall pay Three Hundred Seventy-four dollars (\$374.00) for the annual and past due fees associated with invoice PDS-187375 for the City of Bassett. The total amount shall be made payable to the Division of Environmental Quality and mailed to:

DEQ, Fiscal Division  
**PDS-187375**  
5301 Northshore Drive  
North Little Rock, AR 72118-5317

10. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Fourteen Thousand Dollars (\$14,000.00) of which Twelve Thousand Five Hundred Dollars (\$12,500.00) shall be conditionally SUSPENDED by

DEQ. The allowance of a conditional suspension is based upon DEQ's primary goal or regulatory compliance. If Respondent fully complies with this Order, the suspended civil penalty of Twelve Thousand Five Hundred Dollars (\$12,500.00) 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 Fourteen Thousand Dollars (\$14,000.00) shall be payable immediately to DEQ. Payment of the civil penalty in the amount of One Thousand Five Hundred Dollars (\$1500.00) 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

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

19. 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 25<sup>th</sup> DAY OF MAY, 2023.



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

APPROVED AS TO FORM AND CONTENT:

City of Joiner

BY: Michelle Williams  
(Signature)

Michelle Williams  
(Typed or printed name)

TITLE: Mayor

DATE: 05-11-2023

**RESOLUTION FOR SIGNATORY AUTHORITY**

RESOLUTION NUMBER 2023-4

A RESOLUTION DESIGNATING AND AUTHORIZING THE MAYOR  
TO SIGN AND ACCEPT THE CONSENT AND ADMINISTRATIVE ORDER  
FROM ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT DIVISION OF  
ENVIRONMENTAL QUALITY

WHEREAS, the City of Joiner, in compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Fourteen Thousand Dollars (\$14000.00) of which Twelve Thousand Five Hundred Dollars (\$12,500) shall be conditionally SUPSEDED by DEQ. The allowance of a conditional suspension is based upon DEQ's primary goal or regulatory compliance. If Respondent fully complies with this Order, the suspended civil penalty of Twelve Thousand Five Hundred Dollars (\$12,500.00) 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 Fourteen Thousand Dollars (\$14000.00) shall be payable immediately to DEQ. Payment of the civil penalty in the amount of One Thousand Five Hundred Dollars (\$ 1500.00) 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:

NOW, THEREFORE, BE IT RESOLVED by the City Council of Joiner, Arkansas:

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.

PASSED: May 11, 2023

Attest:

Josie Vasey  
Recorder/Treasurer

APPROVED:

Michelle Williams  
Mayor