

BEFORE THE MISSISSIPPI COMMISSION  
ON ENVIRONMENTAL QUALITY

MISSISSIPPI COMMISSION ON  
ENVIRONMENTAL QUALITY

COMPLAINANT

VS.

ORDER NO. 7010 19<sup>th</sup>

MISSISSIPPI POWER COMPANY

RESPONDENT

AGREED ORDER

COME NOW the Mississippi Commission on Environmental Quality (“Commission”), acting through the staff and Executive Director of the Mississippi Department of Environmental Quality (“MDEQ”), Complainant, and Mississippi Power Company, Respondent, in the above captioned cause and agree as follows:

1.

Respondent operates Plant Jack Watson (hereinafter “the Facility”) located at 10406 Lorraine Road, Gulfport, Mississippi 39503, which is the subject of this administrative order.

A. Prior to April 2015, the Facility utilized coal-fired generators to produce power. Ash from the coal combustion process was sluiced into a 102 acre, on-site ash pond for storage and management. During operation, the ash pond was allowed to decant naturally. Decant water collected in a clear pool at the southern end of the pond, where it was discharged under the Facility’s National Pollution Discharge Elimination System (“NPDES”) permit. In April 2015, the Facility completed conversion to natural gas-fired generation.

- B. In January 2016, Respondent submitted to MDEQ a closure plan for the ash pond. In the closure plan, Respondent represented to MDEQ that it would provide progress reports regarding the status of closure activities as such reports were required by 40 C.F.R. Part 257, the federal Coal Combustion Residual (CCR) Rule. MDEQ approved the closure plan on January 18, 2017.
- C. On or about August 28, 2019, Respondent submitted an annual groundwater report to MDEQ. This report indicates that there is wastewater from the ash pond impacting waters of the State in violation of the Mississippi Air and Water Pollution Control Law, Miss. Code §§ 49-17-1, et seq. (MAWPCL). The information reported is based on groundwater monitoring conducted by Respondent and shows exceedances of promulgated maximum contaminant levels (“MCL”) in groundwater.
- D. Respondent detected elevated levels of arsenic, sulfate, chloride, radium, boron, dissolved solids, molybdenum, lithium, and barium at groundwater monitoring wells around Plant Watson. The levels detected for each of these constituents were either above background levels, or above the maximum contaminant levels (MCLs) set by the Environmental Protection Agency (EPA).<sup>1</sup> These constituents are regulated under the federal CCR Rule and the MAWPCL.

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<sup>1</sup> Sulfate, chloride and dissolved solids are not constituents regulated under Appendix IV of the CCR Rule and do not have established MCLs for that purpose. Lithium and molybdenum have established Ground Water Protection Standards (GWPS) that are exceeded based on the groundwater readings.

2.

MDEQ is authorized to administer and enforce the provisions of the MAWPCL, and the regulations promulgated pursuant thereto. Miss. Code § 49-17-43 authorizes MDEQ to issue orders to address and correct impacts to waters of the State, including groundwater, that violate the MAWPCL.

3.

In lieu of a formal enforcement hearing concerning the violation listed above, Complainant and Respondent agree to settle this matter as follows:

- A. Respondent agrees to pay and Complainant agrees to accept a civil penalty in the amount of \$200,000.00. Respondent shall pay this penalty to MDEQ within thirty (30) days after this Agreed Order has been executed by the MDEQ Executive Director or his designee. The settlement payment shall be submitted to:

Mississippi Department of Environmental Quality  
Attn: Accounts Receivable  
P.O. Box 2339  
Jackson, MS 39225

- B. Within 60 days following issuance of this Order, Respondent shall submit to MDEQ a complete report of the groundwater sampling events referenced herein. The report shall include at a minimum, field data, analytical results, and all other relevant information pertaining to the sampling events.
- C. Within 90 days following Respondent's determination that a statistically significant increase above established groundwater protection standards set pursuant to 40 C.F.R. 257.95(h) has been detected for one or more 40 C.F.R. Part 257 Appendix IV constituent, Respondent shall submit to MDEQ for its approval a plan and schedule for implementation of a comprehensive groundwater investigation

required by 40 C.F.R. § 257.95(g) or an alternate source demonstration as allowed under that Part. As part of the plan, the Respondent shall notify all persons who own land or reside on land that directly overlies any part of the plume of contamination and advise such persons regarding appropriate institutional controls, as determined by MDEQ, necessary to mitigate exposure pathways. Upon submittal, the Respondent shall implement the plan and submit a complete groundwater investigation report within 240 days.

- D. MDEQ has the authority under its general jurisdiction provided in Miss. Code §§ 49-17-1, et seq. to require remediation of groundwater contamination. MDEQ finds that the federal regulations at 40 C.F.R. Part 257 provide a helpful framework for such remediation. As such, not later than 90 days after finding that any 40 C.F.R. Part 257 Appendix IV constituent has been detected at a statistically significant level exceeding the corresponding groundwater protection standard, or March 15, 2020, whichever comes first, Respondent shall initiate an Assessment of Corrective Measures (hereinafter the “ACM”). The ACM must be completed within 90 days and submitted to MDEQ for approval. The ACM shall include the identification and analysis of the short-term and long-term effectiveness of potential remedies addressing at least the following:
- i. The performance, reliability, ease of implementation, and potential impacts of appropriate options for potential remedies;
  - ii. A schedule of implementation, including an estimate on the time required to complete each potential remedy; and

iii. A list of institutional requirements that may affect the implementation of each potential remedy.

Based on the results of the corrective measures assessment conducted under 40 C.F.R. § 257.96, the Respondent, as soon as feasible, shall select a remedy or remedies that, at a minimum, meet the standards listed in 40 C.F.R. § 257.97(b) and propose same to MDEQ for approval. Remedies must control the source of the release and attain the established groundwater protection standard or applicable promulgated MCL. During the implementation of the approved remedy and continuing until the concentration of each constituent detected in exceedance of a promulgated MCL or established groundwater protection standard has returned to a level at or below background levels, Respondent shall continue the assessment groundwater monitoring program to demonstrate the effectiveness of the remedy, as directed by MDEQ. The deadline to complete the ACM may be extended for no longer than 60 days if Respondent demonstrates the need for additional time to complete the assessment. The demonstration must be certified by a qualified professional engineer licensed to practice in the State of Mississippi and submitted to MDEQ for approval. If MDEQ determines through its review that the submitted ACM is not sufficient to accomplish compliance with applicable Federal and State laws or regulations, and with MDEQ-issued permits, then a revised ACM shall be submitted to MDEQ no later than 30 days after receipt of MDEQ's comments. Within 90 days of MDEQ approval of a proposed remedy and the issuance of any necessary permits, Respondent shall initiate remedial activities. Respondent shall

make any changes or additions to the selected remedy, as reasonably required by MDEQ.

- E. Respondent shall submit to MDEQ semi-annual progress reports for the Facility beginning the first quarter after the submittal of the comprehensive groundwater investigation plan and continuing thereafter until released in writing by MDEQ. Respondent shall continue implementation of required remedial actions until released in writing by MDEQ.
- F. Respondent shall comply with all other applicable parts of the federal CCR Rule and shall keep MDEQ informed of its progress with such compliance.
- G. If required by MDEQ, Respondent shall undertake further assessment, monitoring, reporting, and/or reasonable abatement activities as directed by MDEQ, and shall continue such required actions until released in writing by MDEQ.

4.

The issuance of this Order shall not affect Respondent's obligation to comply with applicable Federal, State, or local laws or regulations.

5.

Nothing in this Agreed Order shall limit the rights of MDEQ or the Commission in the event Respondent fails to comply with this Agreed Order. The Agreed Order shall be strictly construed to apply to those matters expressly resolved herein.

6.

Nothing contained in this Agreed Order shall limit the rights of MDEQ or the Commission to take enforcement or other actions against Respondent for violations not addressed herein and for future violations of environmental laws, rules, and regulations.

7.

Respondent understands and acknowledges that it is entitled to an evidentiary hearing before the Commission pursuant to Miss. Code. Ann. § 49-17-31, and that it has made an informed waiver of that right.

8.

Should any provision of this Order be declared by a court of competent jurisdiction over the Commission on Environmental Quality to be inconsistent with Federal or State law and, therefore, unenforceable, the remaining provisions hereof shall remain in full force and effect.

ORDERED this the 23<sup>rd</sup> day of December, 2019.

MISSISSIPPI COMMISSION ON ENVIRONMENTAL QUALITY

BY: \_\_\_\_\_

  
GARY C. RIKARD  
EXECUTIVE DIRECTOR  
MISSISSIPPI DEPARTMENT  
OF ENVIRONMENTAL QUALITY

AGREED, this the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

MISSISSIPPI POWER COMPANY

BY: \_\_\_\_\_

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

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

PERSONALLY appeared before me, the undersigned authority in and for the jurisdiction aforesaid, the within named \_\_\_\_\_ who first being duly sworn, did state upon his/her oath and acknowledge to me that he/she is the \_\_\_\_\_ of Mississippi Power Company and is authorized to sign and enter this Agreement.

SWORN AND SUBSCRIBED BEFORE ME, this the \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission expires: \_\_\_\_\_





# BALCH

& BINGHAM LLP

BRANT PETTIS  
t: (228) 214-0426  
f: (866) 771-3266  
e: [bpettis@balch.com](mailto:bpettis@balch.com)

January 13, 2020

VIA U.S. MAIL

Christopher G. Wells, Esq.  
Mississippi Department of Environmental Quality  
515 E. Amite Street (39201-2709)  
P. O. Box 2261  
Jackson, MS 39225-2261

Re: ***Mississippi Commission on Environmental Quality v. Mississippi Power Company – Order No. 7010-19***

Dear Chris:

Please find enclosed the Agreed Order concerning Plant Watson containing the original signature of Mississippi Power Company's representative.

Please let me know if you have any questions.

Sincerely,

BALCH & BINGHAM LLP



Brant Pettis

BP:bhm

Enclosure

cc: Jeff A. Stone, Esq. (w/o enclosure)

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ORDERED this the 23<sup>rd</sup> day of December, 2019.

MISSISSIPPI COMMISSION ON  
ENVIRONMENTAL QUALITY

BY: 

GARY C. RIKARD  
EXECUTIVE DIRECTOR  
MISSISSIPPI DEPARTMENT  
OF ENVIRONMENTAL QUALITY

AGREED, this the 23rd day of December, 2019.

MISSISSIPPI POWER COMPANY

BY: 

Jeffrey A. Stone  
TITLE: Vice President



STATE OF MS  
COUNTY OF Hancock

PERSONALLY appeared before me, the undersigned authority in and for the jurisdiction aforesaid, the within named Jeffrey A Stowe who first being duly sworn, did state upon his/her oath and acknowledge to me that he/she is the Vice President of Mississippi Power Company and is authorized to sign and enter this Agreement.

SWORN AND SUBSCRIBED BEFORE ME, this the 23 day of Dec., 2019.

Tracy J. Bouma  
NOTARY PUBLIC

My Commission expires:

