

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT  
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Melbourne  
P.O. Box 800  
Melbourne, AR 72556

LIS No. 22-038-001  
Permit Number: AR0020036  
AFIN 33-00026

AMENDMENT NO. 001 TO CONSENT ADMINISTRATIVE ORDER

By mutual agreement of City of Melbourne (Respondent) and the Division of Environmental Quality (DEQ), the Consent Administrative Order (CAO) LIS 22-038 is hereby amended as follows:

1. Respondent and DEQ have agreed to amend the Findings of Fact Section of CAO LIS 22-038 with the addition of the following paragraph:

39. On May 3, 2023, Respondent submitted a request to DEQ to amend CAO LIS 22-038. The request included a revised milestone schedule for Respondent to complete the facility upgrades needed to achieve compliance with the Permit and conduct and submit a Sewer System Evaluation Study (SSES).

40. On September 28, 2023, DEQ conducted a review of the certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.

41. 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 August 1, 2020 through August 31, 2023:

- a. Fourteen (14) violations of Fecal Coliform Bacteria;
- b. Twelve (12) violations of Total Residual Chlorine;
- c. Three (3) violations of Total Suspended Solids;
- d. Two (2) violations of Dissolved Oxygen; and
- e. One (1) violation of Ammonia Nitrogen.

42. Each of the thirty-two (32) discharge limitation violations listed in Paragraph 41 above constitutes a separate permit violation for a total of thirty-two (32) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

43. The review of the DMRs revealed that Respondent failed to submit Non-Compliance Reports (NCRs) for effluent violations reported during the following three (3) monitoring periods:

2021: August, September; and

2022: September.

Failure to submit an NCR for each effluent violation is a violation of Part III, Section D, Condition 7 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

44. The review of the DMRs further revealed that Respondent failed to submit DMRs by the due date for the following five (5) monitoring periods:

2022: May, August, November; and

2023: May, June.

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

45. On October 17, 2023, DEQ requested a meeting with Respondent.

46. On October 30, 2023, DEQ and Respondent conducted a meeting via Zoom to discuss continued issues of non-compliance and current available funding options. During the meeting, DEQ requested that a revised Corrective Action Plan (RCAP) and milestone schedule be submitted for review and approval by December 31, 2023.

2. Respondent and DEQ have further agreed to amend the Order and Agreement Section of CAO LIS 22-038, by deleting Paragraphs 1 and 2 and replacing those paragraphs with the following:

1. Within ninety (90) calendar days of the effective date of this CAO, as amended, Respondent shall submit to DEQ, for review and approval, a RCAP developed by a Professional Engineer (P.E.) licensed in the state of Arkansas. The RCAP 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 and include a reasonable milestone schedule with a final date of compliance. The RCAP shall also include a new milestone schedule to conduct and complete a Sewer System Evaluation Study (SSES). Upon review and approval by DEQ, Respondent shall comply with the terms, milestone schedule, and final compliance date contained in the approved RCAP. The milestone schedule and final compliance date shall be fully enforceable as terms of this CAO, as amended.

2. Within thirty (30) calendar days of completion of the RCAP, Respondent shall submit a certification of compliance from a P.E. licensed in the state of Arkansas, stating that the corrective actions listed in the revised milestone schedule have been completed, and that Respondent is in compliance with the Permit.

3. Respondent and DEQ have further agreed to amend the Order and Agreement Section of CAO LIS 22-038 by modifying Paragraph 4 as follows, with paragraph sections 4.a and 4.b, as set forth in CAO LIS 22-038, remaining in full force and effect:

4. The SSES shall include, at minimum, the elements set forth in sections 4.a and 4.b of CAO LIS 22-038.

4. Respondent and DEQ have further agreed to amend the Order and Agreement Section of CAO LIS 22-038 by adding the following paragraph:

15. On or before the effective date of this Order, Respondent shall submit to DEQ complete NCRs detailing each effluent limit violation and the actions taken to address the effluent limit

violations, as listed in Paragraph 43 above. A separate NCR must be submitted for each monitoring period listed in the Findings of Fact for which a violation of the effluent limits was reported. Respondent shall submit a copy of such NCRs to the Enforcement Branch of the DEQ Office of Water Quality via email at [water-enforcement-report@adeq.state.ar.us](mailto:water-enforcement-report@adeq.state.ar.us).

5. All provisions of CAO LIS 22-038 not explicitly modified by this Amended CAO LIS 22-038-001 shall remain in full force and effect and are hereby incorporated by reference.
6. This Amended CAO 22-038-001 is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d) and APC&EC Rule 8. This Amendment is effective upon DEQ's Director and Chief Administrator of Environment's signature. DEQ retains the right for thirty (30) days following the close of the public comment period to rescind this Amendment based upon the comments received within the thirty (30) day public comment period notwithstanding the public notice requirements.
7. Nothing in this Amended CAO LIS 22-038-001 shall be construed as a waiver by DEQ of its enforcement authority over alleged violations not specifically addressed in CAO LIS 22-038, as amended by CAO LIS 22-038-001. Also, this Amended CAO does not exonerate Respondent from any past, present, or future conduct that is not expressly addressed in CAO LIS 22-038, as amended by CAO LIS 22-038-001, nor does it relieve Respondent of its responsibilities for obtaining any necessary permits.
8. Other than as set forth herein, this Amended CAO may not be altered, amended, or terminated except by written agreement signed by DEQ and by Respondent, or by action of DEQ exercising the right of rescission pursuant to Paragraph <sup>6</sup>/~~5~~ above.

9. This Amended CAO 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.

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

11. The City Council of Respondent has authorized the Mayor and City Clerk/Treasurer to expend funds for compliance activities required by this Amended CAO including but not limited to the payment of a civil penalty. See Exhibit A.

SO ORDERED THIS 16<sup>th</sup> ~~13<sup>th</sup>~~ DAY OF November, 2023.



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

APPROVED AS TO FORM AND CONTENT:

City of Melbourne

BY: Mike Cone  
(Signature)

Mike Cone  
(Typed or printed name)

TITLE: Mayor

DATE: NOV. 13, 2023

RESOLUTION NO. 2023-02

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

*WHEREAS, it is in the City's best interest to enter into an agreement with DEQ and resolve the violations of the Arkansas Water and Air Pollution Control Act listed in the proposed Consent Administrative Order.*

*WHEREAS, the Mayor and Public Works Director or other designated person, working with a Professional Engineer, 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 Melbourne:**

- 1. The proposed Consent Administrative Order has been reviewed and approved by the City Council in a duly convened meeting with a quorum present.*
- 2. The City Council of the City of Melbourne authorizes the Mayor to sign the proposed Consent Administrative Order.*
- 3. The City Council of the City of Melbourne authorizes the Mayor and treasurer to expend funds for compliance activities required by the proposed Consent Administrative Order including but not limited to the payment of a civil penalty as set forth in the proposed Consent Administrative Order.*

Adopted on this 13<sup>th</sup> day of November, 2023

APPROVED: Mike Cone  
Mayor

ATTEST: Alacia Bray  
City Clerk