



# ARKANSAS

## ENERGY & ENVIRONMENT

April 6, 2022

Honorable Rhonda Halbrook, Mayor  
City of Melbourne  
P.O. Box 800  
Melbourne, AR 72556

email: [rhalbrook@yelcot.net](mailto:rhalbrook@yelcot.net)

**RE: NPDES Permit No. AR0020036, AFIN 33-00026  
Executed Consent Administrative Order LIS 22-038**

Dear Mayor Halbrook,

Enclosed is your signed copy of Consent Administrative Order (CAO) LIS 22-038. The Chief Administrator signed the Order on March 8, 2022. The Order will be sent for Public Notice on or about April 10, 2022. The effective date of the Order will be thirty (30) days after the Order has been sent for Public Notice, which will be May 10, 2022.

Per the Order and Agreement Section of CAO LIS 22-038, City of Melbourne has agreed to:

- Comply with the milestone schedule and final compliance date of **April 1, 2023**.
- Submit a certification of compliance from a Professional Engineer (P.E.) stating that corrective actions listed in the revised milestone schedule dated October 9, 2021, have been completed, on or before **April 1, 2023**.
- Submit to DEQ a Sewer System Evaluation Study (SSES), for review and approval, on or before **May 10, 2023**. The SSES must include:
  - Smoke testing in all areas of the collection system;
  - Televising of lines in areas deemed necessary based on the smoke testing;
  - Plan to address deficiencies through rehabilitation, repair, or replacement;
  - Develop a manhole inspection program;
  - Recommend a method of repair and develop a cost estimate based on the results of the study; and
  - A Sanitary Sewer Overflow (SSO) Plan with a detailed milestone schedule.
- Submit quarterly progress reports detailing the progress that has been made towards compliance with the final permitted effluent limits. Quarterly Reports are due on **June 15, 2022; September 15, 2022; December 15, 2022; and March 15, 2023**.

Please refer to CAO LIS 22-038 in any written correspondence to DEQ. Should you have any questions, please feel free to contact me directly at (501) 682-0664, or you may e-mail [sarah.pierce@adeq.state.ar.us](mailto:sarah.pierce@adeq.state.ar.us).

Sincerely,

A handwritten signature in black ink that reads "Sarah Pierce". The signature is fluid and cursive, with the first name "Sarah" being more prominent than the last name "Pierce".

Sarah Pierce  
Enforcement Analyst, Office of Water Quality  
5301 Northshore Drive, North Little Rock, AR 72118

Cc: James Dreher, P.E., Landmark Engineering, [jdreher@landmarkeng.co](mailto:jdreher@landmarkeng.co)  
Julie Whitmire, P.E., Landmark Engineering, [jwhitmire@landmarkeng.co](mailto:jwhitmire@landmarkeng.co)  
Coy Dale, Operator, [cbdale49@gmail.com](mailto:cbdale49@gmail.com)  
Bridget Mcspadden, City of Melbourne, [bmcspadden@yelcot.net](mailto:bmcspadden@yelcot.net)

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  
Permit No. AR0020036  
AFIN 33-00026

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 Melbourne (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 on Arkansas Highway 9 Spur (Circle Drive), Melbourne, Izard County, Arkansas.
2. Respondent discharges treated wastewater to Mill Creek, thence to Piney Creek, thence to the White River in Segment 4F 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 AR0020036 (“Permit”) to Respondent on October 23, 2015. The Permit became effective on November 1, 2015, and expired on October 31, 2020. The Permit was administratively continued pursuant to APC&EC Rule 6.201 until DEQ issued the renewal Permit on September 29, 2021, with an effective date of October 1, 2021, and an expiration date of September 30, 2026.

10. On September 29, 2016, DEQ sent a certified letter to Respondent requesting that a Corrective Action Plan (CAP) be submitted to address the repeated effluent violations of Carbonaceous Biochemical Oxygen Demand (CBOD), Total Suspended Solids, Fecal Coliform Bacteria, and Total Residual Chlorine (TRC).
11. On October 28, 2016, DEQ sent a follow-up letter to Respondent detailing the topics discussed in a meeting between DEQ and Respondent on October 26, 2016. The follow-up letter included a request for a CAP with a milestone schedule and final date of compliance.
12. On January 11, 2017, Respondent submitted a CAP with a final compliance date of January 15, 2018.
13. On March 13, 2017, DEQ sent a letter to Respondent deeming the CAP adequate. DEQ requested that Respondent submit quarterly progress reports detailing the corrective actions taken towards achieving final compliance.
14. On April 13, 2017; August 23, 2017; December 5, 2017; and February 28, 2018, Respondent submitted progress reports detailing the actions taken towards achieving final compliance. The February 28, 2018 progress report indicated that additional actions would need to be taken to achieve final compliance.
15. On May 10, 2018, Respondent submitted a progress report stating that an updated milestone schedule would be submitted to DEQ on May 31, 2018.
16. On June 1, 2018, Respondent submitted an updated milestone schedule with a final compliance date of May 1, 2019.
17. On November 1, 2018, and March 26, 2019, Respondent submitted progress reports detailing the corrective actions taken towards achieving final compliance.

18. On July 5, 2019, Respondent submitted an updated milestone schedule with a final compliance date of April 1, 2020.
19. On October 29, 2019, and February 12, 2020, Respondent submitted progress reports detailing the corrective actions taken towards achieving final compliance.
20. On April 22, 2020, the Environmental Protection Agency (EPA) submitted the initial draft of Respondent's compliance plan developed under U.S. EPA's Circuit Rider Assistance Program.
21. On June 8, 2020, and September 11, 2020, Respondent submitted progress reports detailing the corrective actions taken towards achieving final compliance.
22. On October 7, 2020, DEQ conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.
23. 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, 2017 through July 31, 2020:
  - a. Nineteen (19) violations of TRC;
  - b. Eighteen (18) violations of Ammonia Nitrogen;
  - c. Twelve (12) violations of Fecal Coliform Bacteria; and
  - d. Three (3) violations of CBOD.
24. Each of the fifty-two (52) discharge limitation violations listed in Paragraph 23 above constitutes a separate permit violation for a total of fifty-two (52) separate violations of Ark. Code Ann. § 8-4-217(a)(3).
25. On October 7, 2020, DEQ sent an effluent violation warning letter to Respondent to address repeated effluent violations.

26. On October 20, 2020, DEQ conducted a routine compliance evaluation inspection of the facility. The inspection revealed the following violations:

a. Improper operation and maintenance, as demonstrated by the following conditions:

- i. Floatables in the clarifier need to be skimmed;
- ii. Algae and debris need to be removed from the Parshall flume; and
- iii. The staff gauge needs to be cleaned.

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

b. Screenings were observed on the ground, sludge overflow had not been properly cleaned up, and sludge was outside the drying beds. These findings violate Part III, Section B, Condition 6.A of the Permit and therefore violate Ark. Code Ann. § 8-4-217(a)(3).

c. The secondary flow measuring device must be calibrated as required by Part III, Section C, Condition 2 of the Permit. Failure to perform calibration violates Part III, Section C, Condition 2 of the Permit and therefore violates Ark. Code Ann. § 8-4-217(a)(3).

27. On December 29, 2020, Respondent submitted a progress report detailing the corrective actions taken towards achieving final compliance.

28. On February 2, 2021, DEQ notified Respondent of the inspection results and requested that Respondent submit a written response to each violation documented in the inspection report to DEQ by February 16, 2021. Respondent did not submit the requested response by February 16, 2021.

29. On September 1, 2021, DEQ sent an email to Respondent requesting a CAP update.
30. On September 28, 2021, DEQ and Respondent met via Zoom to discuss the plans to update the facility and Respondent's failure to respond to the October 20, 2020 inspection.
31. On September 29, 2021, Respondent submitted an updated milestone schedule with a final compliance date of October 1, 2022.
32. On September 29, 2021, Respondent submitted a response to the violations observed during the October 20, 2020 inspection.
33. On September 30, 2021, DEQ sent a letter to Respondent deeming the inspection response adequate.
34. On October 9, 2021, Respondent submitted an updated milestone schedule with a final compliance date of April 1, 2023.
35. On October 6, 2021, DEQ conducted a review of certified DMRs submitted by Respondent in accordance with the Permit.
36. 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 October 31, 2021:
  - a. Sixteen (16) violations of Fecal Coliform Bacteria;
  - b. Three (3) violations of TRC;
  - c. One (1) violation of Total Suspended Solids; and
  - d. One (1) violation of Dissolved Oxygen.
37. Each of the twenty-one (21) discharge limitation violations listed in Paragraph 36 above constitutes a separate permit violation for a total of twenty-one (21) separate violations of Ark. Code Ann. § 8-4-217(a)(3).



38. On December 28, 2021, DEQ conducted a review of SSOs submitted by Respondent in accordance with the Permit from January 1, 2019, through August 31, 2021. The review revealed that Respondent reported eighty-three (83) SSOs totaling approximately 155,500 gallons. Respondent is permitted to discharge treated municipal wastewater from its permitted outfall. Respondent is not permitted to discharge untreated wastewater from its collection system. Each SSO constituted an unpermitted discharge. Each unpermitted discharge violated Ark. Code Ann. § 8-4-217(b)(1)(E) and therefore violated Ark. Code Ann. § 8-4-217(a)(3).

### **ORDER AND AGREEMENT**

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall immediately comply with the updated milestone schedule, dated October 9, 2021, and final compliance date of April 1, 2023. The updated milestone schedule, and final compliance date of April 1, 2023, shall be fully enforceable as terms of this Order.
2. On or before April 30, 2023, Respondent shall submit a certification of compliance from a Professional Engineer (P.E.) licensed in the state of Arkansas, stating that the corrective actions listed in the updated milestone schedule dated October 9, 2021, have been completed and that Respondent is in compliance with the Permit.
3. 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 Permit.
4. Within twelve (12) months of the effective date of this Order, Respondent shall develop and submit to DEQ, for review and approval, a Sewer System Evaluation Study (SSES) for its sanitary sewer collection system. The SSES must be certified by a P.E. licensed in the state of Arkansas.

- a. The SSES should at minimum have the following elements:
  - i. Perform smoke testing in all areas of the collection system, beginning with highest priority areas;
  - ii. Perform televising of lines in areas deemed necessary based on smoke testing in order to locate leaks and to determine method of repair;
  - iii. Develop a plan to address deficiencies through rehabilitation, repair, or replacement;
  - iv. Develop a manhole inspection program, beginning in highest priority area; and
  - v. Recommend a method of repair and develop a cost estimate for such. Based on the results of the above studies, Respondent will be able to identify areas requiring improvements and to prioritize those improvements. Short-term and long-term improvements will be considered to remedy deficiencies.
- b. The SSES shall include an Sanitary Sewer Overflow (SSO) Plan with a milestone schedule that details the steps Respondent shall take to implement the corrective actions fully and expeditiously. Upon approval by DEQ, the SSO Plan and milestone schedule shall be incorporated into this Order by reference and become fully enforceable as the terms of this Order.

5. 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), of which Four Thousand Eight Hundred Dollars (\$4800.00) shall be conditionally SUSPENDED by DEQ. The allowance of a conditional suspension is based upon DEQ's primary goal of

regulatory compliance and Respondent's participation in the EPA Circuit Rider Program. If Respondent fully complies with this Order, the suspended civil penalty of Four Thousand Eight Hundred Dollars (\$4800.00) shall be DISMISSED by DEQ. The suspension and subsequent 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 Four Thousand Eight Hundred Dollars (\$4800.00) shall be payable to DEQ on demand. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

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

14. 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 07<sup>th</sup> DAY OF March, 2022.

  
\_\_\_\_\_  
JULIE LINCK, CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

City of Melbourne

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

Rhonda Halbrook  
\_\_\_\_\_  
(Typed or printed name)

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

DATE: 2/1/22  
\_\_\_\_\_

RESOLUTION NO. 2022-01

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 28<sup>th</sup> day of March, 2022

APPROVED: \_\_\_\_\_

Mayor

ATTEST: \_\_\_\_\_

City Clerk