



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 6**

1201 ELM STREET, SUITE 500  
DALLAS, TEXAS 75270-2102

May 30, 2023

TRANSMITTED VIA EMAIL

Mr. Carl Wheatley  
Water Department Manager  
City of Malvern Wastewater Treatment Plant (WWTP)  
3672 Grigsby Ford Road  
Malvern, Arkansas 72104  
cwheatley@malvernar.gov

Re: **Notice of Potential Violation and Opportunity to Confer**  
NPDES Permit: AR0034126

Dear Mr. Wheatley:

Information currently available to the U.S. Environmental Protection Agency, Region 6 (EPA) suggests that the City of Malvern Wastewater Treatment Plant (WWTP) may have committed violations of Section 301 of the Clean Water Act (CWA), 33 U.S.C. § 1311 and its applicable NPDES permit. By this letter, EPA is extending to you an opportunity to advise EPA via a conference call or in writing of any further information which EPA should consider with respect to the potential violations.

As an owner/operator of a WWTP, the City of Malvern applied for and was issued an NPDES Permit, No. AR0034126 (permit), which allowed discharges of pollutants to waters of the United States from the facility, but only in compliance with the terms of the permit. The permit requires the Malvern WWTP to sample and test its effluent discharges to monitor compliance with permit limits and conditions according to specific procedures, and to determine the facility's compliance with the permit and applicable regulations. The permit also requires the Malvern WWTP to submit to Arkansas Department of Environmental Quality (ADEQ) on a monthly basis certified Discharge Monitoring Reports (DMRs) documenting monthly monitoring results, and submission of Noncompliance Reports when appropriate. According to the DMRs submitted by the Malvern WWTP, the Whole Effluent Toxicity (WET) test reported on the DMRs as NODI=E (code for No Discharge due to Analysis not conducted/ Not sampled) which is a violation of the permit as specified in Part II.10. (See attachment).

The EPA is committed to ensuring compliance with the requirements of the CWA and the National Pollutant Discharge Elimination System (NPDES) program. This Notice of Potential Violation and Opportunity to Confer does not assess a monetary penalty; however, it does require compliance with applicable federal regulations. Pursuant to the CWA, EPA can unilaterally seek compliance by imposing regulatory requirements and civil penalties to address violations through administrative actions. However, as a courtesy, EPA is providing you with the opportunity to confer regarding this matter and to provide any further information that we should consider. Within 7 days of the effective date of this letter, please confirm receipt of this e-mail and indicate, via email, if you would like to confer with EPA regarding this matter.

If you have any questions or need additional clarification, please contact Paul Juarez of my staff, at (214) 665-7247 or via email at [juarez.paul@epa.gov](mailto:juarez.paul@epa.gov).

Sincerely,

A handwritten signature in blue ink that reads "Bryant Smalley". The signature is fluid and cursive, with a long horizontal stroke at the end.

Bryant Smalley  
Chief  
Water Enforcement Branch

Attachment

ec: Alan York, Associate Director Office of Water Quality  
Arkansas Department on Environmental Quality (ADEQ)  
[alan.york@adeq.state.ar.us](mailto:alan.york@adeq.state.ar.us)

**Toxicity DMRs Data for AR0034126 from 01/01/2020 - 01122023**

**Permit AR0034126**

Permit Name	Version Nm	Curr. Major Minor Status	Issue Date	Effective Date	Expiration Date
Malvern, City Of	0	Major	4/21/2021	5/1/2021	4/30/2026
Malvern, City Of	4	Major	9/25/2015	11/1/2015	10/31/2020

**Version # 0**

**Outfall TX1Q**

**22415 Whole effluent toxicity - retest #1 / Location 1 / Season 0 / Base**

Limit Start Date	Limit End Date	Sample Type	Frequency of Analysis
5/1/2021	4/30/2026	Composite	Monthly

Limit	
Limit Unit Desc	Pass=0; Fail=1
Statistical Base	7 DA AVG
Limit Value	
DMR Values	
6/30/21	NODI=H
9/30/21	NODI=9
12/31/21	NODI=9
3/31/22	NODI=9
6/30/22	NODI=9
9/30/22	NODI=9
12/31/22	NODI=9

**22416 Whole effluent toxicity - retest #2 / Location 1 / Season 0 / Base**

Limit Start Date	Limit End Date	Sample Type	Frequency of Analysis
5/1/2021	4/30/2026	Composite	Monthly

Limit	
Limit Unit Desc	Pass=0; Fail=1
Statistical Base	7 DA AVG
Limit Value	
DMR Values	
6/30/21	NODI=H
9/30/21	NODI=9
12/31/21	NODI=9
3/31/22	NODI=9
6/30/22	NODI=9
9/30/22	NODI=9
12/31/22	NODI=9

**22418 WET, sublethal retest #1 / Location 1 / Season 0 / Base**

Limit Start Date	Limit End Date	Sample Type	Frequency of Analysis
5/1/2021	4/30/2026	Composite	Monthly

Limit	
Limit Unit Desc	Pass=0; Fail=1
Statistical Base	7 DA AVG

Limit Value	
<b>DMR Values</b>	
6/30/21	NODI=H
9/30/21	NODI=9
12/31/21	NODI=9
3/31/22	NODI=9
6/30/22	NODI=9
9/30/22	NODI=9
12/31/22	NODI=9

**22419 WET, sublethal retest #2 / Location 1 / Season 0 / Base**

Limit Start Date	Limit End Date	Sample Type	Frequency of Analysis
5/1/2021	4/30/2026	Composite	Monthly

Limit	
<b>Limit Unit Desc</b>	Pass=0; Fail=1
<b>Statistical Base</b>	7 DA AVG
<b>Limit Value</b>	
<b>DMR Values</b>	
6/30/21	NODI=H
9/30/21	NODI=9
12/31/21	NODI=9
3/31/22	NODI=9
6/30/22	NODI=9
9/30/22	NODI=9
12/31/22	NODI=9

**51443 Whole Effluent Toxicity - Retest #3 / Location 1 / Season 0 / Base**

Limit Start Date	Limit End Date	Sample Type	Frequency of Analysis
5/1/2021	4/30/2026	Composite	Monthly

Limit	
<b>Limit Unit Desc</b>	Pass=0; Fail=1
<b>Statistical Base</b>	7 DA AVG
<b>Limit Value</b>	
<b>DMR Values</b>	
6/30/21	NODI=H
9/30/21	NODI=9
12/31/21	NODI=9
3/31/22	NODI=9
6/30/22	NODI=9
9/30/22	NODI=9
12/31/22	NODI=9

**51444 Whole Effluent Toxicity, Sub-Lethal Retest #3 / Location 1 / Season 0 / Base**

Limit Start Date	Limit End Date	Sample Type	Frequency of Analysis
5/1/2021	4/30/2026	Composite	Monthly

Limit	
<b>Limit Unit Desc</b>	Pass=0; Fail=1
<b>Statistical Base</b>	7 DA AVG
<b>Limit Value</b>	
<b>DMR Values</b>	
6/30/21	NODI=H
9/30/21	NODI=9
12/31/21	NODI=9
3/31/22	NODI=9
6/30/22	NODI=9
9/30/22	NODI=9
12/31/22	NODI=9

**TGP3B Pass/Fail Static Renewal 7 Day Chronic Ceriodaphnia / Location 1 / Season**

Limit Start Date	Limit End Date	Sample Type	Frequency of Analysis
5/1/2021	4/30/2026	Composite	Quarterly

Limit	
Limit Unit Desc	Pass=0; Fail=1
Statistical Base	7 DA AVG
Limit Value	
DMR Values	
6/30/21	NODI=H
9/30/21	0
12/31/21	0
3/31/22	0
6/30/22	0
9/30/22	<b>NODI=E</b>
12/31/22	0

**TGP6C Pass/Fail Statre 7Day Chronic Pimephales Promelas / Location 1 / Season**

Limit Start Date	Limit End Date	Sample Type	Frequency of Analysis
5/1/2021	4/30/2026	Composite	Quarterly

Limit	
Limit Unit Desc	Pass=0; Fail=1
Statistical Base	7 DA AVG
Limit Value	
DMR Values	
6/30/21	NODI=H
9/30/21	0
12/31/21	0
3/31/22	0
6/30/22	0
9/30/22	<b>NODI=E</b>
12/31/22	0

**TLP3B Low Flow Pass/Fail Survival Test Static Renewal 7 Day Chronic Ceriodaphi**

Limit Start Date	Limit End Date	Sample Type	Frequency of Analysis
5/1/2021	4/30/2026	Composite	Quarterly

Limit	
Limit Unit Desc	Pass=0; Fail=1
Statistical Base	7 DA AVG
Limit Value	
DMR Values	
6/30/21	NODI=H
9/30/21	0
12/31/21	0
3/31/22	0
6/30/22	0
9/30/22	<b>NODI=E</b>
12/31/22	0

**TLP6C Low Flow Pass/Fail Survival Test Static Renewal 7 Day Chronic Pimephale**

Limit Start Date	Limit End Date	Sample Type	Frequency of Analysis
5/1/2021	4/30/2026	Composite	Quarterly

Limit	
Limit Unit Desc	Pass=0; Fail=1
Statistical Base	7 DA AVG
Limit Value	
DMR Values	

6/30/21	NODI=H
9/30/21	0
12/31/21	0
3/31/22	0
6/30/22	0
9/30/22	NODI=E
12/31/22	0

**TOP3B NOEC Lethal Static Renewal 7 Day Chronic Ceriodaphnia dubia / Location**

Limit Start Date	Limit End Date	Sample Type	Frequency of Analysis
5/1/2021	4/30/2026	Composite	Quarterly

Limit	
Limit Unit Desc	Percent
Statistical Base	7 DA AVG
Limit Value	
DMR Values	
6/30/21	NODI=H
9/30/21	16
12/31/21	16
3/31/22	16
6/30/22	16
9/30/22	NODI=E
12/31/22	16

**TOP6C NOEC Lethal Static Renewal 7 Day Chronic Pimephales promelas / Locatic**

Limit Start Date	Limit End Date	Sample Type	Frequency of Analysis
5/1/2021	4/30/2026	Composite	Quarterly

Limit	
Limit Unit Desc	Percent
Statistical Base	7 DA AVG
Limit Value	
DMR Values	
6/30/21	NODI=H
9/30/21	16
12/31/21	16
3/31/22	16
6/30/22	16
9/30/22	NODI=E
12/31/22	12

**TPP3B NOEC Sub-Lethal Static Renewal 7 Day Chronic Ceriodaphnia dubia / Loca**

Limit Start Date	Limit End Date	Sample Type	Frequency of Analysis
5/1/2021	4/30/2026	Composite	Quarterly

Limit	
Limit Unit Desc	Percent
Statistical Base	7 DA AVG
Limit Value	
DMR Values	
6/30/21	NODI=H
9/30/21	16
12/31/21	16
3/31/22	16
6/30/22	16
9/30/22	NODI=E
12/31/22	16

**TPP6C NOEC Sub-Lethal Static Renewal 7 Day Chronic Pimephales promelas / Lo**

Limit Start Date	Limit End Date	Sample Type	Frequency of Analysis
5/1/2021	4/30/2026	Composite	Quarterly

Limit	
Limit Unit Desc	Percent
Statistical Base	7 DA AVG
Limit Value	
DMR Values	
6/30/21	NODI=H
9/30/21	16
12/31/21	16
3/31/22	16
6/30/22	16
9/30/22	NODI=E
12/31/22	12

**Outfall TX1Q**

**TGP3B Pass/Fail Static Renewal 7 Day Chronic Ceriodaphnia / Location 1 / Season**

Limit Start Date	Limit End Date	Sample Type	Frequency of Analysis
11/1/2015	10/31/2020	24 Hour Composite	Quarterly

Limit	
Limit Unit Desc	Pass=0; Fail=1
Statistical Base	7 DA AVG
Limit Value	
DMR Values	
3/31/21	0

**TGP6C Pass/Fail Statre 7Day Chronic Pimephales Promelas / Location 1 / Season**

Limit Start Date	Limit End Date	Sample Type	Frequency of Analysis
11/1/2015	10/31/2020	24 Hour Composite	Quarterly

Limit	
Limit Unit Desc	Pass=0; Fail=1
Statistical Base	7 DA AVG
Limit Value	
DMR Values	
3/31/21	0

**TLP3B Low Flow Pass/Fail Survival Test Static Renewal 7 Day Chronic Ceriodaphni**

Limit Start Date	Limit End Date	Sample Type	Frequency of Analysis
11/1/2015	10/31/2020	24 Hour Composite	Quarterly

Limit	
Limit Unit Desc	Pass=0; Fail=1
Statistical Base	7 DA AVG
Limit Value	
DMR Values	
3/31/21	0

**TLP6C Low Flow Pass/Fail Survival Test Static Renewal 7 Day Chronic Pimephale**

Limit Start Date	Limit End Date	Sample Type	Frequency of Analysis
11/1/2015	10/31/2020	24 Hour Composite	Quarterly

Limit	
Limit Unit Desc	Pass=0; Fail=1
Statistical Base	7 DA AVG
Limit Value	

<b>DMR Values</b>	
3/31/21	0

**TOP3B NOEC Lethal Static Renewal 7 Day Chronic Ceriodaphnia dubia / Location**

<b>Limit Start Date</b>	<b>Limit End Date</b>	<b>Sample Type</b>	<b>Frequency of Analysis</b>
11/1/2015	10/31/2020	24 Hour Composite	Quarterly

<b>Limit</b>	
<b>Limit Unit Desc</b>	Percent
<b>Statistical Base</b>	7 DA AVG
<b>Limit Value</b>	
<b>DMR Values</b>	
3/31/21	8.5

**TOP6C NOEC Lethal Static Renewal 7 Day Chronic Pimephales promelas / Locatic**

<b>Limit Start Date</b>	<b>Limit End Date</b>	<b>Sample Type</b>	<b>Frequency of Analysis</b>
11/1/2015	10/31/2020	24 Hour Composite	Quarterly

<b>Limit</b>	
<b>Limit Unit Desc</b>	Percent
<b>Statistical Base</b>	7 DA AVG
<b>Limit Value</b>	
<b>DMR Values</b>	
3/31/21	8.5

**TPP3B NOEC Sub-Lethal Static Renewal 7 Day Chronic Ceriodaphnia dubia / Loca**

<b>Limit Start Date</b>	<b>Limit End Date</b>	<b>Sample Type</b>	<b>Frequency of Analysis</b>
11/1/2015	10/31/2020	24 Hour Composite	Quarterly

<b>Limit</b>	
<b>Limit Unit Desc</b>	Percent
<b>Statistical Base</b>	7 DA AVG
<b>Limit Value</b>	
<b>DMR Values</b>	
3/31/21	8.5

**TPP6C NOEC Sub-Lethal Static Renewal 7 Day Chronic Pimephales promelas / Lo**

<b>Limit Start Date</b>	<b>Limit End Date</b>	<b>Sample Type</b>	<b>Frequency of Analysis</b>
11/1/2015	10/31/2020	24 Hour Composite	Quarterly

<b>Limit</b>	
<b>Limit Unit Desc</b>	Percent
<b>Statistical Base</b>	7 DA AVG
<b>Limit Value</b>	
<b>DMR Values</b>	
3/31/21	6.5

**Outfall TX1S**

**TGP3B Pass/Fail Static Renewal 7 Day Chronic Ceriodaphnia / Location 1 / Seasor**

<b>Limit Start Date</b>	<b>Limit End Date</b>	<b>Sample Type</b>	<b>Frequency of Analysis</b>
7/1/2016	10/31/2020	24 Hour Composite	Once per 6 Months

<b>Limit</b>	
<b>Limit Unit Desc</b>	Pass=0; Fail=1
<b>Statistical Base</b>	7 DA AVG
<b>Limit Value</b>	
<b>DMR Values</b>	



6/30/20	0
12/31/20	0

**TGP6C Pass/Fail Statre 7Day Chronic Pimephales Promelas / Location 1 / Season**

Limit Start Date	Limit End Date	Sample Type	Frequency of Analysis
7/1/2016	10/31/2020	24 Hour Composite	Once per 6 Months

Limit	
Limit Unit Desc	Pass=0; Fail=1
Statistical Base	7 DA AVG
Limit Value	
DMR Values	
6/30/20	0
12/31/20	1

**TLP3B Low Flow Pass/Fail Survival Test Static Renewal 7 Day Chronic Ceriodaph**

Limit Start Date	Limit End Date	Sample Type	Frequency of Analysis
7/1/2016	10/31/2020	24 Hour Composite	Once per 6 Months

Limit	
Limit Unit Desc	Pass=0; Fail=1
Statistical Base	7 DA AVG
Limit Value	
DMR Values	
6/30/20	0
12/31/20	0

**TLP6C Low Flow Pass/Fail Survival Test Static Renewal 7 Day Chronic Pimephale**

Limit Start Date	Limit End Date	Sample Type	Frequency of Analysis
7/1/2016	10/31/2020	24 Hour Composite	Once per 6 Months

Limit	
Limit Unit Desc	Pass=0; Fail=1
Statistical Base	7 DA AVG
Limit Value	
DMR Values	
6/30/20	0
12/31/20	0

**TOP3B NOEC Lethal Static Renewal 7 Day Chronic Ceriodaphnia dubia / Location**

Limit Start Date	Limit End Date	Sample Type	Frequency of Analysis
7/1/2016	10/31/2020	24 Hour Composite	Once per 6 Months

Limit	
Limit Unit Desc	Percent
Statistical Base	7 DA AVG
Limit Value	
DMR Values	
6/30/20	8.5
12/31/20	8.5

**TOP6C NOEC Lethal Static Renewal 7 Day Chronic Pimephales promelas / Locatic**

Limit Start Date	Limit End Date	Sample Type	Frequency of Analysis
7/1/2016	10/31/2020	24 Hour Composite	Once per 6 Months

Limit	
Limit Unit Desc	Percent
Statistical Base	7 DA AVG

<b>Limit Value</b>	
<b>DMR Values</b>	
6/30/20	8.5
12/31/20	6.5

**TPP3B NOEC Sub-Lethal Static Renewal 7 Day Chronic Ceriodaphnia dubia / Loca**

Limit Start Date	Limit End Date	Sample Type	Frequency of Analysis
7/1/2016	10/31/2020	24 Hour Composite	Once per 6 Months

<b>Limit</b>	
<b>Limit Unit Desc</b>	Percent
<b>Statistical Base</b>	7 DA AVG
<b>Limit Value</b>	
<b>DMR Values</b>	
6/30/20	8.5
12/31/20	8.5

**TPP6C NOEC Sub-Lethal Static Renewal 7 Day Chronic Pimephales promelas / Lo**

Limit Start Date	Limit End Date	Sample Type	Frequency of Analysis
7/1/2016	10/31/2020	24 Hour Composite	Once per 6 Months

<b>Limit</b>	
<b>Limit Unit Desc</b>	Percent
<b>Statistical Base</b>	7 DA AVG
<b>Limit Value</b>	
<b>DMR Values</b>	
6/30/20	100
12/31/20	<2.2