

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Malvern
3672 Grigsby Ford Rd.
Malvern, AR 72104

LIS No. 24-
Permit No. AR0034126
AFIN 30-00040

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 Malvern (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 major municipal wastewater facility (“facility”) located at 3672 Grigsby Ford Road, Malvern, Hot Spring County, Arkansas.
2. Respondent discharges treated wastewater to the Ouachita River in Segment 2F of the Ouachita 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.”

9. DEQ issued NPDES Permit Number AR0034126 (“Permit”) to Respondent on September 25, 2015, with an effective date of November 1, 2015, and an expiration date of October 31, 2020. DEQ issued a major modification to the Permit on January 28, 2020, with an effective date of February 1, 2020, and an expiration date of October 31, 2020. The Permit was administratively continued pursuant to APC&EC Rule 6.201 until DEQ issued the renewal Permit on April 21, 2021. The Permit became effective on May 01, 2021, and expires on April 30, 2026.

10. DEQ conducted a review of the Sanitary Sewer Overflows (SSOs) and treatment bypasses reported by Respondent in accordance with the Permit for the periods of February 28, 2018, through February 28, 2023. The review revealed the following:

- a. Respondent reported 112 SSOs. Respondent reported that 74 of those SSOs reached waters of the state. Respondent is permitted to discharge treated municipal wastewater from the permitted outfall 001 at its facility. Respondent is not permitted to discharge untreated wastewater from its collection system. Each SSO constituted an unpermitted discharge. Each unpermitted discharge violated Part I of the Permit and Ark. Code Ann. § 8-4-217(b)(1)(E) and therefore violated Ark. Code Ann. § 8-4-217(a)(3).¹

11. On September 30, 2022, DEQ sent Respondent an email requesting submission of a Corrective Action Plan (CAP) to address the on-going SSOs and unpermitted discharges.

12. On November 2, 2022, Respondent requested an extension to submit the CAP.

13. On November 3, 2022, DEQ granted Respondent's request for an extension.

14. On November 28, 2022, Respondent submitted a CAP to DEQ to address the SSOs and unpermitted discharges through flow monitoring and integrity evaluation of the collection system and development of a capital improvement plan and schedule of improvements.

15. On December 6, 2022, DEQ advised Respondent the CAP was adequate and to submit quarterly progress reports with the first one being due January 15, 2023.

16. On January 13, 2023, Respondent submitted a CAP Progress Report to DEQ.

17. On February 22, 2023, DEQ sent a letter to Respondent requesting the following:

¹ Respondent conducted sampling and analysis of SSO discharges during four (4) separate SSO events in 2023. The laboratory results for each sample collected during each SSO event yielded *E. coli* results of Too Numerous To Count (TNTC).

- a. Sampling for *E. coli* for each SSO event at Manholes #0069, #0086, #0154, #0155, or any other manhole or pump station that discharges into Town and Chatman Creeks, or any tributaries thereto, and submission of the analytical results and chain-of-custody forms to the DEQ Office of Water Quality, Enforcement Branch within three (3) calendar days of sample collection.
 - b. Sampling and monitoring for *E. coli* at the unnamed tributary to Town Creek at the Walco Road Bridge and Town Creek at the Walco Road Bridge for each SSO event and submission of the analytical results and chain-of-custody forms to DEQ within three (3) calendar days of sample collection. For each sample that exceeds the water quality criteria for *E. coli*, (2050 cfu/100mL from October 1 to April 30 and 410 cfu/100mL from May 1 to September 30), sampling at two distinct locations directly downstream for *E. coli*: (1) at Chatman Creek Bridge at the City of Malvern Wastewater Treatment Plant, and (2) at Grigsby Ford Road Bridge at Chatman Creek, and submission of the analytical results and chain-of-custody forms, including GPS coordinates of the sample locations, to DEQ within three (3) calendar days of sample collection.
 - c. Submission of a Communication Plan to notify the public immediately, through a notification system and signage posted in the affected areas, of the water quality issues in Town and Chatman Creeks, and to provide updates to the public regarding improvements or decreases in water quality in Town and Chatman Creeks.
10. On March 3, 2023, Respondent submitted the Communication Plan and Bacteria Sampling Plan.

11. On March 15, 2023, DEQ conditionally approved Respondent's Bacteria Sampling and Communication Plan for Sanitary Sewer Overflows into Town and Chatman Creeks.

18. On June 21, 2023, DEQ conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.

19. The review revealed that Respondent reported the following violation of the permitted effluent discharge limits detailed in Part I, Section A of the Permit from April 1, 2018, through April 30, 2023:

- a. One (1) violation of Carbonaceous Biochemical Oxygen Demand.

20. The review of the DMRs also revealed that Respondent failed to conduct adequate effluent analysis for the monitoring periods ending:

- a. June 30, 2018;
- b. June 30, 2021; and
- c. September 30, 2022.

Failure to monitor the effluent in accordance with the requirements set forth in Part I, Section A of the Permit is a violation of Part I, Section A of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

21. The review of the DMRs further revealed that Respondent failed to submit Non-Compliance Reports (NCRs) for effluent violations reported during the following two (2) monitoring periods:

- a. June 2018; and
- b. June 2021.

Failure to submit a 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).

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall immediately implement the Bacteria Sampling and Communication Plan as approved by DEQ's letter dated March 15, 2023.
2. Respondent shall comply with the terms and milestone schedule contained in the SSO CAP specifically addressing SSOs at manholes #154 and #155 submitted November 28, 2022. The milestone schedule and final compliance date shall be fully enforceable as terms of this Order.
3. On or before the effective date of this Order, Respondent shall submit to DEQ, for review and approval, a plan and milestone schedule to eliminate the overflow pipe in the sanitary sewer manhole located at the corner of Kelly and Morzett Streets. Until the overflow pipe is eliminated, Respondent shall:
 - a. Monitor the manhole every two hours during each rain event that exceeds 0.5 inches and record each observation;
 - b. Sample each overflow in accordance with the approved Bacteria Sampling and Communication Plan; and
 - c. Report each overflow event to DEQ within twenty-four (24) hours of discovery.
4. On or before the fifteenth (15th) day of the month following the effective date of this Order, and each month thereafter for a period lasting until this Order is closed, Respondent shall submit to DEQ monthly progress reports detailing the actions that have been taken to reduce and eliminate the SSOs at manholes #154 and #155. At a minimum, the reports shall include a list of the corrective actions initiated and completed since the previous report; the number of SSOs that occurred during the reporting period; a reporting of each SSO that includes the start and end date, cause, discharge amount, clean-up and remediation actions performed, sampling sites and dates, a summary of the *E. coli* sampling results for each SSO, and certification that the communication plan was implemented including a description of the notification made to the public; and a

summary of the overall progress towards the elimination of SSOs and achieving compliance with the Permit. Respondent shall submit monthly progress reports thereafter until this Order is closed.

5. Respondent shall ensure all required effluent parameters being analyzed and reported for each monitoring period in accordance with Part I, Section A of the Permit.

6. On or before the effective date of this Order, Respondent shall submit to DEQ complete NCRs detailing the failure to monitor violations listed in Findings of Fact Paragraph 21. A separate NCR must be submitted for each monitoring period listed for which a violation 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.

7. Respondent shall submit NCRs in accordance with Part III, Section D, Condition 7 of the Permit.

8. Within six (6) months of the effective date of this Order, Respondent shall submit to DEQ for review and approval, a System Evaluation and Capacity Assurance Plan and a Capital Improvement Plan (Plan) developed by a Professional Engineer licensed in the state of Arkansas. The Plan shall evaluate, update, and incorporate current SSO CAPs; the 2019 Sanitary Sewer Evaluation Study dated December 31, 2019; the City of Malvern's Master Plan; and the Preliminary Engineering Report dated September 2017. The Plan shall include a System Improvement Prioritization detailing the needed improvement projects and classifying each project as a high, medium, or low priority projects. The Plan shall also identify sources of funding for each high priority project, identify potential funding for medium and low priority projects, and discuss the long-term financial requirements necessary to complete the needed improvements to the collection system, operate and maintain the collection system to prevent future SSOs, and operate and maintain the facility, including, but not limited to, a rate study, scheduled rate increases, and

loans. The Plan shall include a milestone schedule and a date of final compliance. The Plan, milestone schedule, and date of final compliance shall be enforceable as terms of this Order.

9. Within six (6) months of the effective date of this Order, Respondent shall submit to DEQ a progress report detailing the actions that have been taken to eliminate SSOs and achieve compliance with the Permit. At a minimum, the progress report shall include a list of the corrective actions initiated and completed and a statement of Respondent's overall progress towards eliminating SSOs and achieving compliance with the Permit and this Order. Respondent shall submit semi-annual progress reports thereafter until this Order is closed.

10. Upon completion of all requirements of this Order, Respondent shall submit to DEQ a certification of completion, stamped by a Professional Engineer licensed in the state of Arkansas, stating that all requirements of this Order have been completed and that Respondent is in compliance with the Permit.

11. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Thirty Thousand Five Hundred Dollars (\$30,500.00), of which Twenty Thousand Dollars (\$20,000.00) shall be conditionally SUSPENDED by DEQ. If Respondent fully complies with this Order, the suspended civil penalty of Twenty Thousand Dollars (\$20,000.00) 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 Thirty Thousand Five Hundred Dollars (\$30,500.00) shall become due and payable immediately to DEQ. Payment of the civil penalty in the amount of Ten Thousand Five Hundred Dollars (\$10,500.00) 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

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

20. 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 _____ DAY OF _____, 2024.

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

APPROVED AS TO FORM AND CONTENT:

City of Malvern

BY: _____
(Signature)

(Typed or printed name)

TITLE: _____

DATE: _____