

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Magnolia
P.O. Box 666
Magnolia, AR 71754

LIS No. 24-
Permit No. AR0043613
AFIN 14-00059

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 Magnolia (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 treatment facility (“facility”) located at 72 Columbia Road 300, Magnolia, Columbia County, Arkansas.
2. Respondent discharges treated wastewater to Big Creek, thence to Dorcheat Bayou, thence to the Red River in Segment 1A of the Red 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 AR0043613 (“Permit”) to Respondent on January 31, 2019. The Permit became effective on February 1, 2019, and expires on January 31, 2024.
10. On February 27, 2023, and May 8, 2023, DEQ sent Respondent letters regarding reported violations of the effluent discharge limitations.
11. On August 1, 2023, DEQ conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.

12. 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 February 1, 2019, through June 30, 2023:

- a. Sixteen (16) violations of Ammonia Nitrogen;
- b. Three (3) violations of Total Suspended Solids;
- c. Three (3) violations of Total Recoverable Lead;
- d. Two (2) violations of Total Residual Chlorine; and
- e. One (1) violations of Fecal Coliform Bacteria.

13. Each of the twenty-five (25) discharge limitation violations listed in Paragraph 12 above constitutes a separate permit violation for a total of twenty-five (25) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

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

- a. 2021: August, September.

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).

15. The review of the DMRs also revealed that Respondent reported No Data Indicator Code M, Laboratory Error or Invalid Test, for Total Recoverable Lead for the monitoring period ending June 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).

16. DEQ conducted a review of the Sanitary Sewer Overflows (SSOs) reported by Respondent in accordance with the Permit for the period of February 1, 2019, through June 30, 2023. The

review revealed that Respondent reported twelve (12) SSOs totaling over thirty-three (33) million 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).

17. On January 25, 2024, DEQ conducted a review of the certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.

18. 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 July 1, 2023 through December 31, 2023:

- a. One (1) violation of Ammonia Nitrogen; and
- b. One (1) violation of Carbonaceous Biochemical Oxygen Demand.

19. Each of the two (2) discharge limitation violations listed in Paragraph 18 above constitutes a separate permit violation for a total of two (2) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Within thirty (30) calendar days of the effective date of this Order, Respondent shall submit to DEQ, for review and approval, a comprehensive Corrective Action Plan (CAP) developed by a Professional Engineer (P.E.) licensed in the state of Arkansas. The CAP shall include, at minimum, the methods and best available technologies that will be used to identify and correct the cause of the effluent limit violations listed in the Findings of Fact and prevent future violations. The CAP shall also identify a system that will be implemented to ensure that Respondent meets all reporting requirements set forth in the Permit. The CAP shall include a reasonable milestone schedule with

a date of final compliance no later than December 31, 2025. Upon review and approval by DEQ, Respondent shall comply with the terms, milestone schedule, and final compliance date contained in the approved CAP. The milestone schedule and final compliance date shall be fully enforceable as terms of this Order.

2. 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 permitted effluent limits set forth in Part I, Section A of the Permit. Respondent shall submit a final compliance report that includes a certification of compliance, within thirty (30) calendar days of the final compliance date in the approved CAP or by December 31, 2025, whichever occurs first.

3. Respondent shall submit all future NCRs in accordance with Part III, Section D, Condition 7 of 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 include, at minimum, 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 determine the extent of the collection system failure and to determine the appropriate 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. Using the plan developed in section 4.a.iii above, develop a cost estimate to address the identified collection system failures. 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 a SSO Plan to reduce SSOs, that incorporates the elements in paragraph 4.a above, with a milestone schedule that details the steps Respondent shall take to implement the corrective actions necessary to eliminate SSOs from the collection system. 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 Five Thousand Four Hundred Dollars (\$5400.00). Payment 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.

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) calendar 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 _____ DAY OF _____, 2024.

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

APPROVED AS TO FORM AND CONTENT:

City of Magnolia

BY: _____
(Signature)

(Typed or printed name)

TITLE: _____

DATE: _____