

**BEFORE THE  
ARKANSAS POLLUTION CONTROL & ECOLOGY COMMISSION**

**IN THE MATTER OF PULASKI COUNTY  
PROPERTY OWNERS MULTIPURPOSE  
IMPROVEMENT DISTRICT NO. 2021-2 -  
PARADISE VALLEY SUBDIVISION WWTP**

**DOCKET NO. \_\_\_\_\_**

**PERMIT NO. AR0050393**

**AFIN NO. 60-02318**

**REQUEST FOR ADMINISTRATIVE HEARING  
AND COMMISSION REVIEW  
OF  
MAUMELLE WATER CORPORATION**

1. Pursuant to Ark. Code Ann. 8-4-205(B)(1) and (2) and APCEC Regulation No. 8.601 and 8.603, the Maumelle Water Corporation, by its attorney, Richard H. Mays of Richard Mays Law Firm, PLLC, hereby submit its Request for an Adjudicatory Hearing (the "Request for Hearing") and the opportunity to present evidence and oral argument before the Arkansas Commission on Pollution Control and Ecology (the "Commission") regarding the decision of the Director of the Arkansas Department of Energy and Environment, Division of Environmental Quality (herein, "DEQ") (acting through the Director's delegated officer, Alan J. York, Associate Director, Office of Water Quality, DEQ) dated June 16, 2023, to grant and issue Permit No. AR0050393 ("the Permit"), to the Pulaski County

Property Owners Multipurpose Improvement District No. 2021-2 (“the “Permittee”), for the reasons enumerated below.

2. The Petitioner is Maumelle Water Corporation (MWC), a corporation organized and existing under the laws of the State of Arkansas, with its principal offices and place of business located in Roland, Pulaski County, Arkansas. MWC is a public water provider and service company that provides water and water-related services to approximately 1,100 households in the northwest Pulaski County, Arkansas area.

3. MWC submitted written comments to DEQ during the period established by DEQ for submission of official comments on the draft permit as required for standing to file this Request pursuant to Ark. Code Ann. 8-4-205(B)(1) and (2) and APCEC Regulation No. 8.601 and 8.603.

4. This Request has been filed on behalf of MWC within thirty (30) days of June 16, 2023, the date of the permitting decision made by the Director (or his delegated officer), pursuant to Commission Regulation 8.603(B)(1).

### **General Background**

1. Paradise Valley, LLC, an Arkansas limited liability company owned by Mr. Rick Ferguson, proposes to develop a new subdivision named Paradise Valley Subdivision consisting in excess of 300 residences to be constructed on

approximately 31.12 acres, more or less, located on the south side of the Roland Cutoff Road in the Pinnacle Mountain area of Pulaski County, Arkansas. (See area indicated on Exhibit 1 to this Request).

2. The Permit was originally applied for by an entity owned by Mr. Rick Ferguson named Southwest Equity Investments on behalf of a Saddle Ranch Subdivision Wastewater Treatment Plant (WWTP). The name of Saddle Ranch Subdivision WWTP was subsequently changed to Paradise Subdivision WWTP in May 2021.

3. In or about January 2022, Mr. Ferguson formed the Pulaski County Property Owners Multipurpose Improvement District No. 2021-2 (“the Improvement District”), which was substituted as the applicant for the Permit.

4. The District proposes to construct and utilize a 0.05 million gallon/day (MGD) (*i.e.*, 50,000 gal/day) wastewater treatment plant on thirty (30) acres of land owned by it that is located on the north side of Roland Cutoff Road from the Subdivision. Thus, as proposed and as contemplated by the Permit, the wastewater treatment plant for Paradise Valley Subdivision will not be located on the same property as the Subdivision, nor on property owned by the Subdivision.

5. The wastewater treatment plant for Paradise Valley Subdivision would discharge its effluent into an unnamed tributary of the Mill Bayou whose channel is immediately adjacent to the properties of Individual Petitioners Butski, Van Den

Berg, Henderson, Henley and Hudson, and which ultimately discharges into the Arkansas River. **(See Exhibit No. 1 to this Complaint)**

6. The tributary of Mill Bayou into which the effluent from the wastewater treatment plant for Paradise Valley Subdivision would be discharged is a low-to-zero flow water body<sup>1</sup>, and in periods of low precipitation, has no natural flow. Consequently, except for storm water flow from periods of precipitation, the discharge from the wastewater treatment plant would, under normal conditions, constitute the primary source of water in the unnamed tributary.

7. The financial planning documents submitted by Mr. Ferguson to the Office of Water Quality, Division of Environmental Quality, Department of Energy and Environment of the State of Arkansas in support of the Permit Application provides that some 300 – 316 residential connections will be made to the wastewater treatment plant, and that the wastewater for the Subdivision will be processed through a “package” treatment plant with a capacity of 0.05 million gallons per day (MGD).

8. The 0.05 MGD capacity of the proposed wastewater treatment plant is grossly insufficient to handle the wastewater from 300 - 316 residences, and additional treatment capacity will be required. When that increased capacity is

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<sup>1</sup> It is admitted by DEQ and the Permittee that the 7Q10 flow of Mill Bayou at the proposed discharge point is zero (-0-).

added to the plant, an increased amount of wastewater will ultimately flow through the plant and its additions, and an increased volume of effluent will be discharged into the unnamed tributary of Mill Bayou, adding to the concentrations of wastewater effluent and its constituents in Mill Bayou.

9. The discharge of wastewater effluent from the Subdivision's sewage plant will inevitably cause contamination and degradation of the unnamed tributary of Mill Bayou, of Mill Bayou itself, and the Arkansas River, and cause overflow onto Plaintiffs' properties, affecting the health and safety of the Plaintiffs, their pets and livestock, and vegetation grown on their properties, as well as the water quality and aquatic vegetation, fish and wildlife who inhabit or drink from the Bayou.

10. Numerous issues were obvious from the Application for Permit, the facts developed by DEQ and through public comments during the application process period, and from the statutes, regulations and policies of or applicable to DEQ of which DEQ was or should have been aware, and that required no comments to have been submitted by the public to bring them to DEQ's attention and consideration.

Furthermore, during the public comment period for the proposed Permit, the Petitioners and others submitted comments on the issues that are described herein. Those comments raised legal and factual objections to the issuance of the proposed Permit that DEQ should have determined were sufficient to deny the

Permit, but did not. Instead, DEQ ignored, disregarded or failed to properly evaluate those comments and issued the permit notwithstanding them.

11. The comments submitted by the Petitioners and others during the public comment period demonstrate that, in issuing the Permit to the Pulaski County Property Owners Multipurpose Improvement District No. 2021-2 - Paradise Valley Subdivision WWTP, DEQ failed to follow the statutes and regulations applicable to the issuance of such permits, failed to fully consider the substance of the comments submitted by the Petitioners and other members of the public, and acted arbitrarily and capriciously in issuing a permit that was not based upon sound and generally accepted scientific evidence and information.

12. The issues and objections to the permit of which DEQ was or should have been aware based upon the applicable statutes and regulations, the substance of the comments submitted by the Petitioners and other members of the public, and sound and known scientific evidence and information are contained in the following section.

## **Factual and Legal Comments Applicable to Issues Appealed**

### **(A) *DEQ Failed To Consider and Respond To Comments Submitted by MWC***

13. Maumelle Water Company (“MWC”) obtains the water that it distributes to its customers from three (3) subsurface water wells in the Roland, Arkansas area. **See Exhibit No. 2 to this Request for Hearing.** One of those wells (Well No. 1) is located in close proximity to the floodplain of Mill Bayou, and the area under the channel of Mill Bayou is within the zone of influence of said Well No. 1, meaning that water in that channel is subject to being drawn into the well and entering MWC’s water system.

14. MWC submitted comments to DEQ on September 2, 2021, April 27, 2022, and November 29, 2022. Each of those comments informed DEQ of the presence of MWC’s Well No. 1 in close proximity to the Mill Bayou channel, and commenting that DEQ should perform or cause to be performed a study of the potential impact of the discharge from the proposed Paradise Valley wastewater treatment plant upon the aquifer underlying Mill Bayou and MWC’s Well No. 1.

15. On March 28, 2022, Bryan Leamons, Senior Operations Manager of DEQ, Office of Water Quality, acknowledged receipt of the comments of April 27, 2022. On April 22, 2022, Mr. Leamons further acknowledged receipt of the MWC comment letter, and stated that “We do have your comment letter in the record, and

it will be part of the draft permit comment and responses. It will be included when we make a final decision.”

16. Notwithstanding the assurance by Mr. Leamons that MWC’s comments would be considered, nothing further was communicated to MWC by DEQ, and there is no indication in DEQ’s Responses to Comments contained in the final Permit that DEQ did consider and respond to MWC’s comments and concerns.

17. Ark. Code Ann. §8-4-203(e)(2)(a) provides that, in considering an application for a wastewater discharge permit, DEQ’s final decision shall include a response to each issue raised in any public comments received during the public comment period, and that “The response shall manifest *reasoned consideration of the issues raised by the public comments and shall be supported by appropriate legal, scientific or practical reasons for accepting or rejecting the substance of the comment in the department’s permitting decision.*” (Emphasis added) See also Commission Regulation 8.211(A)(2), providing:

The Director's final decision shall include a response to each issue raised in any public comments received during the public comment period, if any. In the case of any discharge limit, emission limit, environmental standard, analytical method or monitoring requirement, the record of the proposed action and the response shall include a written explanation of the rationale for the proposal, demonstrating that any technical requirements or standards are based upon generally accepted scientific knowledge and engineering practices.



18. DEQ failed to consider and respond in writing to MWC's comments, and the permit should be voided and remanded to DEQ for such further proceedings as may be appropriate.

**A. Discharge Of Chlorine Into Mill Bayou Should Not Be Permitted.**

20. The Statement of Basis for the Permit states in relevant part (p. 8):

EPA considers concentrations at the edge of the mixing zone higher than 0.011 mg/l (Chronic Criterion) or 0.019 mg/l (Acute Criterion) to be toxic to aquatic organisms. A review of the TRC [Total Residual Chlorine] data submitted during the previous permit term shows an average TRC value of 0.90 mg/l. The receiving water for this facility has a 7Q10 of 0 cfs; therefore there is no mixing zone and the chronic criterion must be met *at the outfall*. (italics added)

Since the average level of TRC is higher than EPA's Chronic Toxicity Criteria (0.09 mg.L >0.011 mg/l), the discharge has a reasonable potential to violate the water quality criteria. ...

21. The words "a reasonable potential" in the quotation are an understatement. "Virtual certainty" would be more appropriate. Scientific studies readily available on the internet consistently show that chlorine is highly toxic to fish. An abstract of an early study states:

On-site continuous-flow bioassays on fathead minnows using chlorinated and dechlorinated effluents from two treatment plants have shown residual chlorine to be the principal toxic agent in these effluents. The toxic effects at both locations were similar, in spite of the fact that one plant received metal-finishing wastes and the other did not; in both cases, the pH and dissolved oxygen concentration were favorable for fish life.

The residual chlorine concentrations that produced a 100 percent kill was 0.16 and 0.21 mg/l; threshold concentrations were 0.04 and 0.05 mg/l.

The addition of sodium thiosulfate to both effluents removed the residual chlorine and rendered them nontoxic.

*Toxicity of Combined Chlorine Residuals to Freshwater Fish*, Zillich, John A., Journal of the Water Pollution Control Federation. Vol. 44, No. 2, pp. 212-220 (Feb., 1972)

22. In the Permit, DEQ proposes to allow the Permittee to discharge admittedly toxic concentrations of chlorine into a water body that admittedly has zero (0) flow at various time of the year. In fact, experience has shown that, at times of little precipitation – the summer and fall of 2022 are good examples – there is no water in Mill Bayou.

23. The monitoring requirements for Total Residual Chlorine (“TRC”) contained in the Permit will be difficult for the Permittee to comply with (see Permit, page 8, Statement of Basis), and based on the compliance history of the Waterview Estates WWTP permit compliance, not likely to be obeyed. The result will be a loading of chlorine in Mill Bayou in the areas around the outfall.

24. Even if water were present in Mill Bayou during effluent discharge, the toxicity of the discharge of the effluent from the WVE’s treatment plant **must be met at the outfall**. Beyond that, the effluent would, as a practical matter, receive very little, if any, dilution or buffering, of its concentration and toxicity. This would present a hazard not only to fish, but to the flora and fauna of the area, and to human health. There are alternatives to the treatment of the effluent from the type of plant that is

being used at this facility that are cost-effective, and not as harmful to the environment as the chlorine treatment process being utilized.

25. Further, in the 2017 renewal of this permit, Part II, Condition No. 5 of the permit required submittal of a plan for compliance with the TRC limits, which was to include development of and an implementation schedule for Best Management Practices (BMPs) to reduce TRC in the effluent. The “plan” that was submitted by the permittee was a one-paragraph commitment in a one-page letter to ADEQ dated July 20, 2017, stating:

WVE will evaluate the use of lower dosage chlorine tabs. The evaluation will attempt to determine the lowest chlorine dosage that is consistently effective for disinfection of the effluent. If necessary, a dechlorinating tablet feeder will be added to the contact chamber to remove excess TRC prior to discharge. Implementation of these BMPs is anticipated within 60 days of this letter.

26. There is no indication in the record of this permit that this evaluation was ever conducted, and if so, the results. The permittee has apparently been discharging chlorine for the five-year period of the now-expired permit. The proposed Permit would, for inexplicable reasons not discussed in the Statement of Basis, allow the permittee an additional three (3) years within which to achieve final compliance with the TRC limitations.

27. Further, the few (4) inspections that DEQ performed of the Waterview Subdivision WWTP from 2011 to 2021 demonstrates that the Ferguson-owned treatment plants have no conception about the use of chlorine treatment. One of the DEQ inspection reports of the Waterview WWTP states: “The chlorine tablets being used were not the correct size as designed and were simply placed in the bottom of the chlorination unit.” (See further discussion of the DEQ Inspection Reports herein.) The Paradise Valley WWTP would receive the same type of neglect and mismanagement that the Waterview Subdivision WWTP has received.

**(C) *The Permit Should Contain a Limit and Testing/Reporting Requirement for Phosphorus***

28. Permit AR0053210 does not contain a requirement for phosphorus control. In fact, it does not even require testing and reporting for phosphorus in the effluent. The package wastewater plant would serve what promises to be a small but crowded community, and the precedent it sets will negatively impact the entire area as it develops and grows. Other package treatment plants will be added over time, many by the same developer, and they too will be allowed to discharge without phosphorus removal. This one small wastewater treatment plant will in time turn into many package treatment plants with hundreds of thousands of gallons of poorly treated wastewater going into Mill Bayou daily. The environmental impact of that will be devastating to the ecology and could

negatively impact health in this community that is closely connected to Mill Bayou and the surrounding wetlands.

**(D) *The Permit violates the State's Anti-Degradation Policy***

29. States are required by EPA regulations to develop and adopt an antidegradation policy and methods for implementing such policy pursuant to 40 CFR § 131.12. Arkansas's Antidegradation Policy (herein "the Policy") is set forth in Rule 2.201 of the Rules of the Arkansas Pollution Control & Ecology Commission. The Policy is simple and straightforward, providing as follows:

**Rule 2.201 Existing Uses.** Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

30. The discharge of TRC, phosphorous and nitrogen from the treatment plant into Mill Bayou with its low-to-zero flows, will have a profound effect on the existing level of water quality of the Bayou necessary to protect the existing uses and its immediate environment. It will also have a profound effect on the aquatic vegetation in the Bayou area, which will be detrimental to fish, wildlife mammals and aquatic wildfowl.

31. The Permit's Statement of Basis (p. 4) simply states that the limitations and requirements of the Permit "are consistent with the Anti-degradation Policy ... " without explaining how it is consistent. The procedures prescribed in Rule 2 for

changing or affecting the existing water quality in a water body have not been followed in this case, and there is no scientific basis or justification for allowing the discharge of TRC, phosphorous and nitrogen into Mill Bayou.

32. The regulations provide, in relevant part, that before a water quality classification may be changed, the following factors must be considered:

- ▶ identify the antidegradation protection level (i.e., the “*tier*”) that applies to a surface water;
- ▶ determine baseline water quality (BWQ);
- ▶ assess water quality degradation;
- ▶ identify and assess less degrading or non-degrading alternatives;
- ▶ determine the importance of economic or social development to justify significant degradation of high quality surface waters;

33. None of those factors have been satisfied. The issuance of this renewal permit will further degrade the water quality of Mill Bayou, and would be a violation of Rule 2.

**(E) *Failure to Incorporate Water Quality Standards,  
Especially Eco-Region Standards***

34. Part I, Discharge Limitations, of the draft permit contains no effluent limitations on Dissolved Oxygen, Fecal Coliform, or Total Residual Chlorine. APCEC Reg. 2, page A-19, defines eco-region standards for streams in the Arkansas River Valley eco-region, including limitations on Dissolved Oxygen.

Failure to include the applicable eco-region standard for Dissolved Oxygen does not comply with Regulation 2. Furthermore, APCEC Reg. 2.507 assumes a secondary contact status for all streams not designated primary contact, and imposes a fecal coliform limit. This Permit proposes no fecal coliform limit. The same applies to residual chlorine. This Permit application does not comply with APCEC Reg. 2.

***(F) A Flow Meter and Buffering Tanks Should Be Required***

35. Good engineering practices demands that the Permit require the use of a modern flow meter. capable of measuring the amount of flow to +/- 1%. The permittee agreed to provide metering at +/- 1% but DEQ degraded the number in the permit to +/- 10%.

36. One of the most important factors for a package wastewater plant is flow because there is no buffering capacity for a package plant in the form of reserve tanks or lagoons that are used. The flow meter should be accurate to +/- 1%. An accurate recording of flow also becomes important due to the fact that DEQ and the permittee do not account for any inflow or infiltration in the draft permit. The Subdivision that proposes to be served by the Permit proposes to add a substantial number of homes that will add flow to the wastewater plant. Those additional

homes, high precipitation, and an out-of-date flow meter may mean that untreated wastewater is discharged into Mill Bayou that goes undiscovered.

***(G) It is Unclear if Financial Assurance Requirements  
Have Been Met by the Permittee***

37. The applicant for the permit is a “nonmunicipal domestic sewage treatment works” as defined in Ark. Code Ann. §8-4-203. As such, it is subject to the requirements of Subsection (b)(1)(A)(iii) of that statute. The applicant has not met those requirements.

38. This Permit does not require an Ark. Code Ann. § 8-4-203(b)(1)(D) financial plan for non-municipal domestic wastewater treatment plants, and there is no evidence this applicant has ever prepared and submitted the required financial plan. Without a proper financial plan in place, it is unclear if the applicant will be able to fund regular maintenance and repairs to the facility. It is also unclear, even in the short term, if it will be able to fund daily cleaning of the facility necessary to maintain optimal performance and compliance with discharge limits. Absent the plan necessary to fund daily operator visits, it cannot be assumed permit limits are achievable in the short term, or maintenance is funded in the long term.



**(H) Wastewater Operator License**

39. It is well-recognized in the wastewater treatment industry (as evidenced by numerous articles, treatises and journals) that wastewater treatment “package plants” such as the one that will be used for Paradise Valley wastewater, are difficult to maintain and to operate. The Petitioners have previously commented on the likelihood of the necessity to expand/add to the treatment plant as the number of houses constructed in the proposed subdivision increase.

40. The part-time operator for the proposed treatment plant is inadequate to keep the plant in good repair and to avoid malfunctions, thereby requiring a “by-passing” of the treatment facilities. The purported permit transfer document lists Arlo Jason Cyz as the Class III licensed wastewater treatment operator for the facility. However, it does not appear Mr. Cyz performed any wastewater training during the immediately preceding period. It is unclear from the record available whether or not Mr. Cyz is presently properly licensed after failing to complete training.

**(I) Flooding**

41. The Clean Water Act protects wetland areas, and the Rivers and Harbors Act prohibits placing anything in proximity to navigable streams which, through flooding, may obstruct that stream. The maps and information submitted during this comment period show the facility is in the 100-year flood plain. Placing

wastewater plants in flood plains is not recommended by the 10-state standard referenced by both ADEQ and ADH.

**(J)                    *Lack of Common Ownership/Control***

42. The wastewater treatment facility for the subdivision is not located on the subdivision property, but on a separate tract located across Roland Cut-Off Road. That separate tract is also owned by an entity that is not the Paradise Valley Subdivision LLC. Having a privately-owned wastewater treatment facility for a subdivision owned by persons or entities that are not the owner of the treatment facility presents a myriad of potential problems regarding access and responsibility for operation and maintenance. Those problems could affect, not only the residents of the subdivision, but also owners of property in the area of the treatment plant and other members of the public.

**(K)                    *Effluent From The Paradise Valley Treatment Plant  
Will Contaminate The Mill Bayou Watershed***

43. Mill Bayou has a 7Q10 of 0 cfs flow (*i.e.*, standing water with no flow). Water flows in this area only after a precipitation event. If the Paradise Valley wastewater treatment plant (WWTP) is permitted to discharge up to 50,000 gallons per day at the proposed outfall into the Mill Bayou watershed, the only flow during non-storm conditions would from the WWTP. If the volume is too low, then the

wastewater would not flow and would remain in the vicinity until the next storm event. Mill Bayou is a wetland, with the land surrounding Mill Bayou inundated with surface water throughout the year with hydrophytes growing in the saturated soil conditions.

44. The Permit requires the water leaving the outfall at the “end-of-pipe” to meet standards, without dilution. If there is a violation of any constituent (TRC, CBOD, etc), the watershed would receive discharge that exceeds water quality standards until it is identified and corrected. Thus, biological hazards or excess treatment byproducts would flow directly into the waterway and impact the areas downstream, which includes several farms, residences, and the town of Roland, AR. There is every reason to anticipate violations of the effluent standards, as the other wastewater treatment plant within the watershed owned and operated by the same developer has had several violations in their treatment process and measurements (AR DEQ Inspection Reports for Permit # AR0050393).

**(L) There Is A High Potential For Contamination  
Of The Maumelle Water Corporation Well,  
A Public Drinking Water Source**

45. The town of Roland is dependent on Maumelle Water Corporation for their drinking water, which is supplied from 3 groundwater wells into the Quaternary System Alluvial Aquifer. Well No. 1, which is closest to the Paradise

Valley WWTP, is approximately eighty (80) feet in depth. The geologic unit in which the well is located consists of gravel, sand, silt, and clay in channel, floodplain, and terrace deposits. The hydraulic conductivity of these units range from 102.5 -104.5 ft/day (gravel) to 10<sup>-3</sup> to 10<sup>-7</sup> feet per day (clay) and the deposits can be very heterogenous based on the historic river flow path. Depending on the distribution of the high permeability units like gravel and sand (100 to 103 feet per day), there is a high probability that the water from the surface will infiltrate into the alluvial aquifer in a fairly short time period. When treated wastewater is discharged to Mill Bayou, where it will have some residence time due to little to no flow, there is a high likelihood that it will infiltrate down to the Quaternary Alluvial Aquifer. (See comments of Dr. Laura Ruhl-Whittle, Assoc. Professor, Department of Earth Sciences, University of Arkansas at Little Rock, dated April 5, 2022).

46. Numerous requests and comments were submitted to DEQ requesting that it conduct or cause to be conducted a study to determine the potential impact of the location of the outfall for the Paradise Valley WWTP on Well No. 1 of the Maumelle Water Company. That analysis was never done, and DEQ has no scientific or engineering basis for its finding in the Permit that the effluent from the outfall will not endanger the integrity of the water well.

(M) **Inspection Reports Of The  
Waterview Estates Wastewater Treatment Plant  
Indicate That The Paradise Valley Treatment Plant  
Will Not Be Operated Properly**

47. Numerous comments were submitted by the public suggesting that Mr. Rick Ferguson, the owner and developer of Paradise Valley Subdivision, LLC, and also the owner/developer of Waterview Estates, LLC, with its wastewater treatment plant, is a “bad actor” within the meaning of Arkansas Code Ann. §8-1-106. A review of Mr. Ferguson’s performance and that of his companies in operating the Waterview Estates Wastewater Treatment Plant is instructive in how the Paradise Valley Subdivision Wastewater Treatment Plant will likely be operated if the Permit is approved.

48. The data records of DEQ relative to the Waterview Wastewater Treatment Plant contain only four (4) inspection reports for that plant. The following is a summary of the findings of the inspectors taken from each inspection report.

**Inspection Report dated September 2, 2011**

The wastewater treatment facility is showing signs of significant corrosion. Corrosion is one of the major causes in limiting the lifespan of package treatment units. You are strongly encouraged to implement an aggressive corrosion control program to extend the life of the treatment plant. This is a violation of Part II, B.1.a of the permit which requires the facility to be properly operated and maintained at all times.

Since the corrosion at this facility is mainly located at the headworks and there have been complaints about odor both at the facility and at the pump station, it is reasonable to assume that septic conditions are occurring in the wet wells.

### **Inspection Report dated August 6, 2013**

On July 31, 2013, I performed a reconnaissance inspection at the above-referenced facility. ... The following violations of Part III.B.1.A of the permit were observed:

- (1) a. *Chlorine tablets were observed loose the inlet flow area upstream of the tablet feeder (see photograph 1 of 5). Chlorine feed tubes are absent, non-functional, and/or did not have chlorine tablets present within them. (Italics added)*
- b. *Corrosion was observed on the grating at the head works of the plant (see photograph 2 of 5). (Italics added)*
- c. *Small trees were observed to be growing around the base of the plant (see photograph 3 of 5). (Italics added)*
- d. *The plant site is not enclosed with fencing and emergency contact information (see photograph 4 of 5). This also does not meet the standards in the Recommended Standards for Wastewater Facilities (10-States Standards) which was adopted by the Arkansas Pollution Control and Ecology Commission in Minute Order 80- 21. The Arkansas Water and Air Pollution Control Act (A.C.A § 8-4-217(a)(3)) makes it unlawful to violate any Order adopted by the Commission. (Italics added)*
- (2) *A staff gauge was not provided to measure the head at the weir (see photograph 5 of 5). This is in violation of Part III.C.2 of the permit. (Italics added)*
- (3) *Discharge Monitoring Reports have not been submitted for the above-referenced facility since August 2012. This is in violation of Part III.C.5 of the permit. DMRs from September NPDES Report Page 2 2012 through to the current reportable monitoring period are required to be submitted in response to the inspection report. (Italics added)*

Additionally, Part II.1 of the permit requires the operator of the wastewater treatment facility to be licensed as a Class III by the State of Arkansas. Documentation that a Class III operator is operating the above-referenced facility is required in response to this inspection report.

### **Inspection Report dated October 8, 2015**

Please see the following comments:

1) *Flow measurements are not being recorded using totalized flow.* A review of the Waterview Flow Report for the month of June revealed the flows were exactly the same for all nine days they were recorded. During the follow-up visit on September 15, the operator indicated flow was being measured at the v-notch weir (Photo 10) that is directly after initial treatment and is not the v-notch weir following final treatment where the primary and secondary flow measuring devices are located; (Italics added)

2) *the operator is not familiar with the totalizer and the digital readouts (Photo 7) that are produced.* It was also revealed *the totalizer had never been calibrated since it was installed in 2011;* and, (Italics added)

3) *the flow is being estimated using calculations for a 90° v-notch weir; however, documentation for the facility indicated the v-notch weir after final treatment was a 45° v-notch weir and the v-notch weir where flow was being measured appears to be a 60 degree v-notch weir.* Please submit the make and model of the installed totalizer with a copy of the operations and maintenance manual; the degree of the v-notch weir after final treatment; records indicating the totalizer has been calibrated and is capable of measuring flows with a maximum deviation of less than +/- 10%; and, documentation verifying the operator is correctly recording flow using the totalizer.

*The chlorine tablets being used were not the correct size as designed and were simply placed in the bottom of the chlorination unit and the top of the unit that hold the tablets in the tubes was sitting atop the treatment facility.* The correct size chlorine tablets should be purchased and used. (Italics added)

### Inspection Report dated October 20, 2021

1. One of the pumps located in the EQ basin was not operational due to a faulty switch (Photo 2). This is a violation of Part III, Section B, 1, of the permit requiring Proper Operations and Maintenance.
2. Both the weirs located in the clarifiers and the staff gauge should be cleaned (Photos 5 & 8). This is a violation of Part III, Section B, 1, of the permit requiring Proper Operations and Maintenance.
3. *Several chlorine tablets were placed in the bottom of the chlorinator instead of being properly placed into the tubes* (Photo 6). This is a violation of Part III, Section B, 1, of the permit requiring Proper Operations and Maintenance. (Italics added)
4. *The totalizer has not been calibrated annually* as recommended by the manual. This is a violation of Part III, Section B, 1, of the permit requiring Proper Operations and Maintenance. (Italics added)
5. Total Residual Chlorine (TRC) is a required testing parameter outlined in the permit. The DMRs show a value reported for TRC, *but the lab analysis supplied by Mr. Seeman does not*. Please provide copies of TRC values measured by your commercial lab. (Italics added)

49. Although there were only four inspections of the Waterview Plant over the ten-year period from 2011 to 2021, the picture that emerges from the same types of violations found in each inspection is one of neglect, mismanagement and incompetence. The comment in the October 8, 2015 inspection report that “the operator is not familiar with the totalizer and the digital readouts” could apparently apply to all aspects of the plant’s operations during the entire ten year period.

These inspection reports, and the continued violations of operational requirements over the years is a warning that the Paradise Valley wastewater



treatment plant will be operated with the same careless indifference to compliance with the permit requirements.

**(N) *The Permittee Has Not Applied For A CWA 404 Permit***

50. The site is in a wetland location that should be considered “Waters of the US.” It appears that the Permittee has not requested a 404 permit for the initial wastewater permit.

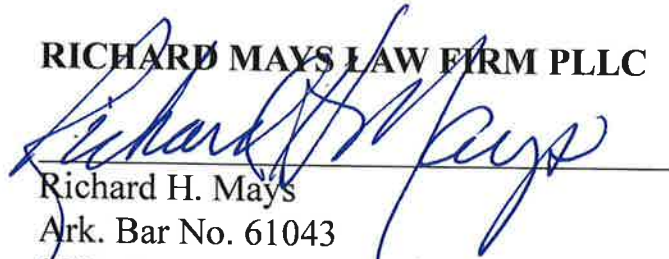
**CONCLUSION**

Petitioners respectfully request an adjudicatory hearing and Commission Review of DEQ’s final NPDES permit for the and for the relief requested herein. A copy of the Request for Hearing is being served on all appropriate parties identified in Regulation 8.603(C)(1)(a)-(e).

This Petition is in addition to and not in lieu of any other petitions or portions filed herein on behalf of the Petitioners.

Respectfully submitted,

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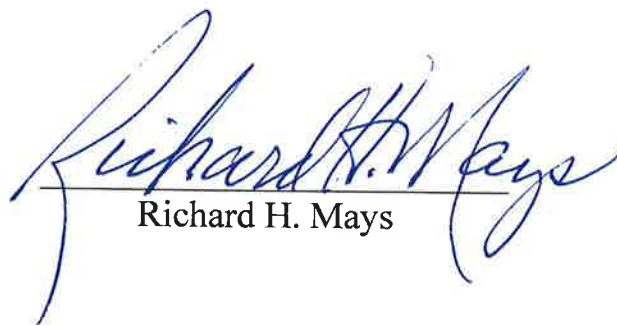
**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on the date set forth below, he served a copy of the above and foregoing Request for Administrative Hearing and Commission Review on the following counsel by depositing a copy of the same in the U.S. Mail, first-class delivery, and by email:

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Date: July 13, 2023.

  
Richard H. Mays

Google Earth

Paradise Valley  
Subdivision

Petthaver Homes

Proposed Detail  
Location

Mill Bayou

Roland

700 m Camera: 5,544 m 34°53'36"N 92°30'36"W 137 m



EXHIBIT

1

Abbot's

