

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT  
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Morrilton  
P.O. Box 438  
Morrilton, AR 72110

LIS No. 23-100  
Permit No. 3509-WR-6  
AFIN 15-00034

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 Morrilton (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 decentralized wastewater treatment system with drip irrigation dispersal of the treated wastewater from the wastewater treatment plant ("facility") located in Morrilton, Conway County, Arkansas.
2. Respondent is regulated pursuant to the Arkansas Water and Air Pollution Control Act ("Act"), Ark. Code Ann. § 8-4-101 *et seq.*
3. DEQ is authorized under the Act to issue permits in the state of Arkansas for the operation of disposal systems or any part of them and to initiate an enforcement action for any violation of a permit issued pursuant to the Act.

4. Ark. Code Ann. § 8-4-217(a)(3) provides:

(a) It shall be unlawful for any person to:

(1) Cause pollution, as defined in § 8-4-102, of any of the waters of this state;

(2) Place or cause to be placed any sewage, industrial waste, or other wastes in a location where it is likely to cause pollution of any waters of this state;

(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].

5. 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.

6. 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.”

7. DEQ issued No-Discharge Water Permit 3509-WR-6 (“Permit”) to Respondent on April 19, 2017. The Permit became effective on May 1, 2017, and expired on April 30, 2022.

**Failure to Submit a Timely Permit Renewal Application**

8. Part III, Condition 23 of the Permit requires Respondent to submit a complete permit renewal application at least 180 days prior to the expiration date of the Permit if the activity regulated by the Permit is to continue after the expiration date.

9. Respondent has operated this facility beyond the expiration date of the expired permit.

10. On May 13, 2021, and August 2, 2021, Respondent was notified that the Permit would expire on April 30, 2022, and that in order to continue the regulated activity, a complete renewal application must be submitted no later than November 1, 2021.

11. On March 17, 2022, DEQ received a Permit renewal application from Respondent, and on April 11, 2022, DEQ notified Respondent that the Permit renewal application was incomplete as it lacked information necessary to evaluate the Permit renewal application.

12. Respondent submitted additional information to the Permit renewal application to DEQ on June 23, 2022, June 27, 2022, August 23, 2023, and September 12, 2023.

13. The complete Permit renewal application was not received by November 1, 2021. Failure to submit the complete Permit renewal application by November 1, 2021, is a violation of Part III, Condition 23 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

#### **Complaint and Unpermitted Discharges**

14. On February 28, 2022, DEQ received a complaint that untreated wastewater was being discharged into a creek.

15. In response to the complaint, a DEQ inspector visited the site unannounced and found no evidence of discharge at that time.

16. On April 1, 2022, DEQ conducted a reconnaissance compliance evaluation inspection of the facility. The inspection revealed the following violations:

- a. Respondent installed a pipe from the wastewater storage pond to the middle of a culvert in the unnamed tributary of Miller Bayou with the purpose to discharge wastewater from the pond. Constructing or using a new outlet for the discharge of waste into waters of the state without a permit from DEQ is a violation of Ark. Code Ann. § 8-4-217(b)(1)(D) and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
- b. Respondent was discharging partially treated wastewater from the treatment pond to waters of the state. Respondent is neither permitted or authorized to discharge

wastewater to waters of the state. This unpermitted discharge is a violation of Part II, Condition 11 of the Permit and Ark. Code Ann. § 8-4-217(b)(1)(E) and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

17. On April 5, 2022, Respondent sent a written notification to DEQ of the unpermitted discharge at the facility.
18. On April 6, 2022, DEQ instructed Respondent by letter<sup>1</sup> to take immediate actions regarding the unpermitted discharges and requested a Wastewater Capacity and Pond Evaluation Plan (WCPEP).
19. On April 26, 2022, DEQ notified Respondent of the inspection results via letter and requested a written response to each violation be submitted to DEQ within thirty (30) calendar days of receipt of the inspection report.
20. On June 22, 2022, Respondent submitted a Wastewater Capacity and Pond Evaluation Plan to DEQ.
21. On September 1, 2022, DEQ sent Respondent a letter<sup>2</sup> setting forth DEQ's concerns and comments on the submitted WCPEP.
22. On September 28, 2022, Respondent and DEQ met to discuss DEQ's concerns and comments set forth in the September 1, 2022 letter.
23. On November 16, 2022, Respondent submitted a WCPEP Work Plan, dated November 2, 2022, with an anticipated final date of compliance of December 15, 2025.

---

<sup>1</sup> April 6, 2022 Letter to Respondent: Unpermitted Discharge and Request for Wastewater Capacity and Pond Evaluation Plan (WCPEP)  
[https://www.adeg.state.ar.us/downloads/WebDatabases/PermitsOnline/NPDES/EnforcementReports/3509-WR-6-Morrilton%20Unpermitted%20Discharge%20and%20Request%20for%20Wastewater%20Capacity%20and%20Pond%20Evaluation%20Plan\\_20220406.pdf](https://www.adeg.state.ar.us/downloads/WebDatabases/PermitsOnline/NPDES/EnforcementReports/3509-WR-6-Morrilton%20Unpermitted%20Discharge%20and%20Request%20for%20Wastewater%20Capacity%20and%20Pond%20Evaluation%20Plan_20220406.pdf)

<sup>2</sup> September 1, 2022 Letter to Respondent: Response to Wastewater Capacity and Pond Evaluation Plan  
[https://www.adeg.state.ar.us/downloads/WebDatabases/PermitsOnline/NPDES/EnforcementReports/3509-WR-6-DEQ%20Response%20to%20Morrilton%20Wastewater%20Capacity%20and%20Pond%20Evaluation%20Plan\\_20220901.pdf](https://www.adeg.state.ar.us/downloads/WebDatabases/PermitsOnline/NPDES/EnforcementReports/3509-WR-6-DEQ%20Response%20to%20Morrilton%20Wastewater%20Capacity%20and%20Pond%20Evaluation%20Plan_20220901.pdf)

24. On February 12, 2023, Respondent notified DEQ by telephone that it will begin an emergency bypass and unpermitted discharge on February 13, 2023, and will collect a wastewater sample. DEQ instructed Respondent to collect additional samples every three (3) days for the duration of the emergency bypass and to report the total volume of partially treated wastewater released during the emergency bypass.
25. On March 13, 2023, Respondent submitted the laboratory report for the sample collected on February 13, 2023, from the emergency bypass unpermitted discharge.
26. On April 3, 2023, Respondent notified DEQ by email that the emergency bypass unpermitted discharge ceased on March 27, 2023.
27. Respondent discharged partially treated wastewater from the facility to waters of the state for forty-three (43) days from February 13, 2023, to March 27, 2023. Each day of unpermitted discharge is a separate violation for a total of forty-three (43) violations of Part II, Condition 11 of the Permit and Ark. Code Ann. § 8-4-217(b)(1)(E) and therefore constitutes forty-three (43) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

#### **Annual Report 2021**

28. On April 22, 2022, Respondent submitted the 2021 Annual Report for the Permit to DEQ.
29. DEQ reviewed the 2021 Annual Report. Respondent reported an exceedance of Fecal Coliform Bacteria and exceedances of the Plant Available Nitrogen rates set forth in the Permit. Such exceedances are a violation of Part I, Table I of the Permit and therefore are a violation of Ark. Code Ann. § 8-4-217(a)(3).

30. In DEQ's letter dated September 1, 2022, referenced above, DEQ set forth its comments and concerns regarding the 2021 Annual Report, and DEQ and Respondent discussed those comments and concerns during the September 28, 2022 meeting referenced above.

### ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall comply with the existing Permit until either the effective date of the permit renewal or the effective date of the permit termination.
2. Respondent shall immediately report all Sanitary Sewer Overflows using tracking number ARU500331 with the following reporting requirements:
  - a. A sanitary sewer overflow is any spill, release or diversion of wastewater from a sanitary sewer collection system including:
    - (1) Any overflow, whether it discharges to the waters of the state or not.
    - (2) An overflow of wastewater, including a wastewater backup into a building (other than a backup caused solely by a blockage or other malfunction in a privately owned sewer or building lateral), even if that overflow does not reach waters of the state.
  - b. 24-Hour Reporting:

When an SSO is detected – no matter how small – it must be reported within 24 hours of its discovery to the OWQ Enforcement Branch by using the online form at <https://www.adeg.state.ar.us/water/enforcement/sso/data.aspx> (the preferred method) or at [ssoadeg@adeg.state.ar.us](mailto:ssoadeg@adeg.state.ar.us). This initial 24-hour report must include the following information:

    - (1) Permit Number (ARU500331)
    - (2) Location of overflow (manhole number or street address)
    - (3) The receiving water (if applicable)
    - (4) Cause of overflow (if known)
    - (5) Estimated volume of overflow so far

- (6) Total duration of the overflow
  - c. 5-Day Follow-Up Written Web Reporting:

A written report of overflows shall be provided to DEQ within five (5) calendar days of the 24-hour report. A follow-up written report (5-day report) can be completed and submitted using the following link:  
<https://www.adeg.state.ar.us/water/enforcement/ssso/data.aspx>
  - d. 24-Hour and 5-Day Reporting:

If the 24-hour report submitted includes all of the information requested in the 5-day report described in Paragraph 2.b above, then a follow-up 5-day report is not required.
3. For each emergency bypass unpermitted discharge Respondent shall:
- a. Collect a sample at the discharge point, within the first fifteen (15) minutes of discharge, for the parameters listed in DEQ's letter dated September 1, 2022. If the emergency bypass unpermitted discharge exceeds three (3) calendar days, then an additional sample shall be collected every third day during the emergency bypass unpermitted discharge. The sample results and chain of custody shall be submitted to DEQ within three (3) calendar days of the date of the laboratory report.
  - b. Provide an email notification to DEQ at [Water-Enforcement-Report@adeq.state.ar.us](mailto:Water-Enforcement-Report@adeq.state.ar.us) that includes photographs documenting the wastewater pond levels, the start date and time of the emergency bypass, the stop date and time of the emergency bypass, and the amount of wastewater released during the emergency bypass.
4. Within thirty (30) calendar days of the effective date of this Order, Respondent shall submit a progress report detailing the work performed under the November 2, 2022 WCPEP Work Plan.
5. Within sixty (60) calendar days of the effective date of this Order, Respondent shall submit to DEQ, for review and approval, a revised comprehensive Corrective Action Plan (CAP) developed by a Professional Engineer (P.E.) licensed in the state of Arkansas. The CAP shall

include the elements develop and submitted in Respondent's November 2, 2022 WCPEP Work Plan; detail the methods and best available technologies that will be used to correct the violations listed in Findings of Fact and prevent future violations; identify a system that will be implemented to ensure that Respondent meets all reporting requirements set forth in the Permit; and include a reasonable milestone schedule with a date of final compliance no later than January 31, 2026. 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.

6. 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 actions taken to achieve compliance with the Permit. At a minimum, the report shall include a list of the corrective actions initiated and completed and a statement of the overall progress towards achieving final compliance. Respondent shall submit the final compliance report no later than the final compliance date.

7. Within sixty (60) calendar days of the effective date of this Order, Respondent shall submit the following to DEQ:

- a. A Haul Off Action Plan; and
- b. A Preliminary Engineer Report evaluating wastewater management alternatives, specifically discharge to a regional wastewater treatment facility and replacement of the current WWTP with a traditional point-source discharge wastewater treatment plant.

8. Within twelve (12) months of the effective date of this Order, with the overall goal of eliminating capacity and non-capacity related SSOs, Respondent shall develop and submit to DEQ,



for review and approval, a Sewer System Evaluation Study (SSES) for its sanitary sewer collection system for the facility. The SSES must be certified by a P.E. licensed in the state of Arkansas.

- a. The SSES should have the following elements, at minimum:
  - (1) Perform smoke testing in all areas of the collection system, beginning with highest priority areas;
  - (2) Perform televising of lines in areas deemed necessary based on smoke testing in order to locate leaks and to determine method of repair;
  - (3) Develop a plan to address deficiencies through rehabilitation, repair, or replacement;
  - (4) Develop a manhole inspection program, beginning in the highest priority area;
  - (5) Recommend a method of repair and develop a cost estimate for such repairs. Based on the results of the above studies, Respondent will be able to identify areas requiring improvements and prioritize those improvements;
  - (6) Short-term and long-term improvements shall be considered in Respondent's plan to remedy deficiencies.
- b. The SSES shall include a SSO Plan and a Capital Improvement Plan with a milestone schedule that details the steps Respondent shall take to implement the corrective actions fully and expeditiously.
- c. The Capital Improvement Plan shall include a system improvement prioritization with High, Medium and Low Priority Projects. Sources of funding should be identified for all high priority projects. Forecasts of available funding for medium and low priority projects should be made to facilitate future revenue needs.

d. Upon approval by DEQ, the SSO Plan, Capital Improvement Plan, and milestone schedule shall be incorporated into this Order by reference and become fully enforceable as terms of this Order.

9. In compromise and full settlement of the violations specified in the Findings of Fact Respondent agrees to pay a civil penalty of Twenty-One Thousand Eight Hundred Dollars (\$21,800.00), of which Eleven Thousand Eight Hundred Dollars (\$11,800.00) 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 current efforts to obtain compliance. If Respondent fully complies with this Order, the suspended civil penalty of Eleven Thousand Eight Hundred Dollars (\$11,800.00) 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 Twenty-One Thousand Eight Hundred Dollars (\$21,800.00) shall be payable immediately to DEQ. Payment of the civil penalty of Ten Thousand Dollars (\$10,000.00) is due within thirty (30) calendar days of the effective date of this Order and 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

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

18. 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 12<sup>th</sup> DAY OF DECEMBER, 2023.

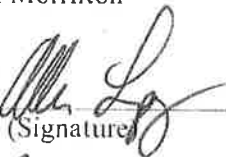


CALEB J. OSBORNE, DIVISION OF ENVIRONMENTAL QUALITY, DIRECTOR  
CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

City of Morrilton

BY:

  
(Signature)

Allen Lipscomb  
(Typed or printed name)

TITLE:

Mayor

DATE:

12-11-23

RESOLUTION NO. 17 of 2023

A RESOLUTION AUTHORIZING THE CITY OF Morrilton 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 Morrilton:

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 Morrilton authorizes the Mayor to sign the proposed Consent Administrative Order.*
3. *The City Council of the City of Morrilton 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 17th day of December 2023

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

  
Mayor

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

  
City Clerk