

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Strong
P.O. Box 737
Strong, AR 71765

LIS No. 24- 117
Permit No. AR0021687
AFIN 70-00117

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 Strong (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 municipal wastewater treatment plant ("facility") located on Railroad Street (East End), Strong, Union County, Arkansas.
2. Respondent discharges treated wastewater to Lapile Creek, thence to Felsenthal Lake, thence to the Ouachita River in Segment 2D 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 an 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. § 8-4-217(b)(1) provides:
 - (b) (1) It shall be unlawful for any person to engage in any of the following acts without having first obtained a written permit from the division:
 - (E) To discharge sewage, industrial waste, or other wastes into any of the waters of the state.
8. 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.
9. 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."
10. DEQ issued NPDES Permit Number AR0021687 ("Permit") to Respondent on August 14, 2019. The Permit became effective on September 1, 2019, and expires on August 31, 2024.

11. On December 15, 2022, DEQ received an anonymous complaint that a pump station was not functional and wastewater was discharging onto the ground from a manhole near the pump station.
12. On December 22, 2022, DEQ conducted a reconnaissance inspection of the facility. The inspection revealed the following violations:
 - a. An unpermitted discharge from three (3) separate cracks in the manhole at the end of Redwood Street was flowing directly into an unnamed tributary of South Lapile Creek. Unpermitted discharges are a violation of Ark. Code Ann. § 8-4-217(b)(1)(E).
 - b. The low-lying area behind the influent pump house to Pond 1 was filled with untreated wastewater constituting an unpermitted discharge in violation of Ark. Code Ann. § 8-4-217(b)(1)(E).
13. On January 10, 2023, DEQ notified Respondent of the inspection results and requested a written response addressing the violations be submitted to DEQ within thirty (30) days of receipt of the inspection report. Respondent did not provide the requested written response to DEQ.
14. On February 8, 2023, DEQ held a meeting via virtual online platform with Respondent to discuss the inspection findings and corrective actions taken at the wastewater treatment plant. Respondent agreed to submit the following by April 15, 2023:
 - a. An Operation and Maintenance (O&M) Plan detailing steps to prevent unpermitted discharges and also including how and when the effluent control valve is open, the process of scheduling sampling and laboratory analysis of the effluent discharge, and a maintenance schedule to ensure adequate freeboard is consistently maintained in the pond;

- b. A detailed report demonstrating the influent and effluent pumps are functioning according to design including photographic documentation; and
- c. A copy of the Operator Contract and Service Agreement. The contract must include the specific job duties the operator must perform, how often the duties are performed, and minimum site visit frequency.

Respondent did not provide the requested information by April 15, 2023.

15. On March 16, 2023, Respondent's consulting engineer emailed a response to DEQ stating the Respondent had been awarded a grant from the Arkansas Natural Resources Commission (ANRC) to fix the wastewater treatment plant. The funds can be used to replace the effluent pumps, electrical, and flow meter.

16. On December 18, 2023, DEQ conducted a review of the Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit from November 1, 2020, to October 31, 2023. The review revealed that Respondent failed to submit DMRs by the due date for the following ten (10) monitoring periods:

- a. 2021: May, July, September, October, November, December;
- b. 2022: March, April; and
- c. 2023: March, July.

Failure to submit DMRs with the monitoring results obtained during the monitoring period no later than the 25th of the month following the completed monitoring period is a violation of Part III, Section C, Condition 5 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 cease all unpermitted discharges.

2. On or before the effective date of this Order, Respondent shall submit a certification that all unpermitted discharges documented in the inspection performed on December 22, 2022, have ceased and the facility is in compliance with the Permit. The certification shall include a summary of the cause of the unpermitted discharges and corrective actions taken to cease the unpermitted discharges and prevent recurrence. The certification shall also contain photographic documentation of the corrective actions.
3. If Respondent cannot certify compliance as set forth in Paragraph 2 above, then 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 correct the violations listed in Findings of Fact Paragraphs 12 and 16 and prevent future violations. The CAP shall also include a reasonable milestone schedule with a date of final compliance no later than June 30, 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.
4. If a CAP is submitted pursuant to Paragraph 3 above, Respondent shall submit quarterly progress reports detailing the progress that has been made towards compliance with the Permit and the Act by ceasing the unpermitted discharges. The first progress report shall be due on or before the fifteenth (15th) day of the month following the effective date of this Order and then quarterly thereafter until the Order is closed. Within thirty (30) calendar days of the final compliance date in the approved CAP or by June 30, 2025, whichever occurs first, Respondent shall submit a final

compliance report that includes a certification of compliance, signed and stamped by a P.E. licensed in the state of Arkansas

5. Respondent shall submit all DMRs in accordance with Part III, Section C, Condition 5 of the Permit.

6. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Four Thousand Five Hundred Dollars (\$4500.00), of which Three Thousand Five Hundred Dollars (\$3500.00) shall be conditionally SUSPENDED by DEQ. The allowance of a conditional suspension is based upon DEQ's primary goal of regulatory compliance. If Respondent fully complies with this Order, the suspended civil penalty of Three Thousand Five Hundred Dollars (\$3500.00) 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 Four Thousand Five Hundred Dollars (\$4500.00) shall be payable immediately to DEQ. Payment of the civil penalty in the amount of One Thousand Dollars (\$1000.00) 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

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

15. 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 18 DAY OF July, 2024.

Bailey Taylor
BAILEY M. TAYLOR, DIVISION OF ENVIRONMENTAL QUALITY, INTERIM
DIRECTOR CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

City of Strong

BY: Daryll Howell
(Signature)

DARYLL HOWELL
(Typed or printed name)

TITLE: Mayor

DATE: 6/17/24

RESOLUTION NO. 629

A RESOLUTION AUTHORIZING THE CITY OF Strong 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 Strong:

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 Strong authorizes the Mayor to sign the proposed Consent Administrative Order.*
3. *The City Council of the City of Strong 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 9th day of July, 2024

APPROVED: Daniel Howell
Mayor

ATTEST: K. Howell
City Clerk