

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

AFIN: 27-00008

LIS No. 17-012

H. G. TOLER & SON LUMBER COMPANY, INC.  
10468 HWY 229 S  
LEOLA, ARKANSAS 72084

**CONSENT ADMINISTRATIVE ORDER**

This Consent Administrative Order (CAO) is issued pursuant to the authority delegated under the federal Clean Air Act, 42 U.S.C. § 7401 *et seq.*, and the federal regulations issued thereunder. In addition, this CAO is issued pursuant to the authority of the Arkansas Water and Air Pollution Control Act (the Act), Ark. Code Ann. § 8-4-101 *et seq.*, Arkansas Pollution Control and Ecology Commission (APC&EC) Regulation 7, APC&EC Regulation 8, APC&EC Regulation 18, APC&EC Regulation 19, and APC&EC Regulation 26.

The issues herein having been settled by agreement of H. G. Toler & Son Lumber Company, Inc. (Respondent) and the Director of the Arkansas Department of Environmental Quality (ADEQ), it is hereby agreed and stipulated that the following FINDINGS OF FACT and ORDER AND AGREEMENT be entered.

**FINDINGS OF FACT**

1. Respondent owns and operates a lumber mill located at 10468 Hwy 229 S in Leola, Grant County, Arkansas.
2. ADEQ issued Air Operating Permit 0193-AOP-R6 (Permit R6) to Respondent on October 15, 2014 and 0193-AOP-R7 (Permit R7) on January 20, 2016.
3. 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, regulation, or order adopted by the Arkansas Pollution Control and Ecology Commission under this chapter or of a permit issued under this chapter by the Arkansas Department of Environmental Quality.

4. Ark. Code Ann. § 8-4-103(c)(1) as referenced by Ark. Code Ann. §§ 8-4-304 and 8-4-311 authorizes ADEQ 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 regulation or permit issued pursuant to the Act.

5. Pursuant to Ark. Code Ann. § 8-4-103(c)(1)(B) as referenced by Ark. Code Ann. § 8-4-304, "Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment."

6. On April 4, 2016, ADEQ conducted a routine compliance inspection of Respondent's facility.

7. The inspection covers two (2) Air Operating Permits. Permit R6 was issued on October 15, 2014, and expired on January 18, 2016. Permit R7 was issued on January 20, 2016, and is currently still in effect.

8. The inspection revealed Respondent failed to record daily opacity observations at SN-13 (Wood Waste Boiler with Cyclone) on May 10, 2015, August 19, 2015, September 14, 2015, September 15, 2015, September 19, 2015, December 20, 2015, January 9, 2016, January 10, 2016, January 23, 2016, January 30, 2016 and February 2, 2016. Such failures violate Specific Condition 4 of Permit R6 and Permit R7, and therefore violate Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

9. Specific Condition 21 of Permit R7 requires Respondent to prepare, by March 1 of each year, and submit to the delegated authority upon request, an Annual Compliance

Certification report for the previous calendar year containing the information specified in §63.11225(b)(1) through (4). On the date of the inspection, ADEQ personnel requested to review the Annual Compliance Certification report. Respondent advised ADEQ personnel that the report had not been prepared. Such failure violates Specific Condition 21 of Permit R7 and therefore violates Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

10. Specific Condition 22(b) of Permit R7 requires Respondent to keep records to document conformance with the work practices, emission reduction measures, and management practices required by §63.11214 and §63.11223 as specified in §63.11225(c)(2)(i) through (vi). On the date of the inspection, Respondent failed to provide such records upon request by ADEQ personnel. Such failure violates Specific Condition 22(b) of Permit R7, and therefore violates Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

11. Specific Condition 36 of Permit R6 and Specific Condition 32 of Permit R7 require Respondent to maintain monthly records to demonstrate compliance with a throughput limit not to exceed 42,149 tons of hog fuel (combined) at SN-12 (Hog Fuel Bins) per rolling 12-month period. This data shall be submitted in Semi-Annual Monitoring (SAM) reports. However, throughput compliance data was not submitted in SAM reports received by ADEQ on January 27, 2015, July 31, 2015, January 27, 2016, and July 26, 2016. Such failures violate Specific Condition 36 of Permit R6 and Specific Condition 32 of Permit R7, and therefore violate Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

12. In correspondence dated April 05, 2016, ADEQ notified Respondent of preliminary inspection findings.

13. In correspondence dated October 10, 2016, ADEQ notified Respondent that violations noted in Paragraphs 7 and 8 meet the definition of a High Priority Violator. In a

response received via telephone on October 18, 2016, Terracon Consultants, Inc. (Terracon), on behalf of Respondent, stated that submittal of the required documents will be submitted to demonstrate compliance with Specific Conditions 21 and 22(b) of the Permit. Terracon stated that additional documentation regarding Specific Conditions 4 and 36 of Permit R6 and Specific Conditions 4 and 32 of Permit R7 would be forthcoming. As of January 18, 2017, Respondent has not submitted any additional documentation.

### **ORDER AND AGREEMENT**

WHEREFORE, Respondent, neither admitting nor denying the factual and legal allegations contained in this CAO, and ADEQ do hereby agree and stipulate as follows:

1. Respondent shall immediately take any and all steps necessary to achieve and maintain compliance with the Permit.
2. Within thirty (30) calendar days of the effective date of this CAO, Respondent shall submit a compliance plan and implementation schedule (the Plan) addressing all issues of noncompliance noted in Paragraphs 6, 7, 8 and 9 of the FINDINGS OF FACT of this CAO. The Plan shall be subject to ADEQ's approval and shall not be deemed final until ADEQ provides Respondent written confirmation to that effect. The terms of the Plan shall not exceed ninety (90) calendar days and shall:
  - (A) For corrective measures implemented and completed prior to submission of the report, provide the date of implementation and a narrative specifying how the measures satisfactorily address the noncompliance/violation; and,
  - (B) For proposed corrective measures to be implemented and completed after submission of the written report, include a narrative specifying how the measures will satisfactorily address the particular noncompliance/violation, and provide an implementation plan with schedule for completing the proposed measures.

All corrective measures implemented pursuant to the provisions of this Paragraph shall be completed within ninety (90) calendar days of the effective date of this CAO. All records shall be mailed to:

ADEQ, Office of Air Quality  
-Enforcement Section  
5301 Northshore Drive  
North Little Rock, Arkansas 72118-5317.

3. In compromise and full settlement for instances of noncompliance specified in the FINDINGS OF FACT, Respondent agrees to pay the sum of **FOUR THOUSAND EIGHT HUNDRED DOLLARS (\$4,800.00)**. Payment is due within thirty (30) calendar days of the effective date of this CAO. Such payment shall be made payable to:

ADEQ, Fiscal Division  
5301 Northshore Drive  
North Little Rock, Arkansas 72118-5317.

In the event that Respondent fails to pay the civil penalty within the prescribed time, ADEQ shall be entitled to attorneys' fees and costs associated with collection.

4. All applicable submissions required by this CAO are subject to approval by ADEQ. In the event of any deficiency, Respondent shall, within fifteen (15) calendar days of notification by ADEQ, submit any additional information requested. Failure to adequately respond to the notice of deficiency within fifteen (15) calendar days constitutes a failure to meet a deadline and is subject to the civil penalties established in the following Paragraph.

5. Failure to meet the limits, requirements, or deadlines of this CAO or the applicable approved schedules provided for herein constitutes a violation of said CAO. If Respondent fails to meet any limits, requirements, or deadlines, Respondent consents and agrees to pay, on demand, to ADEQ civil penalties according to the following schedule:

- |  |                |
|--|----------------|
| (a) First day through the fourteenth day:    | \$100 per day  |
| (b) Fifteenth day through the thirtieth day: | \$500 per day  |
| (c) More than thirty days:                   | \$1000 per day |

Stipulated penalties shall be paid within thirty (30) calendar days of receipt of ADEQ's demand to Respondent for such penalties. These stipulated penalties may be imposed for delay in scheduled performance and shall be in addition to any other remedies or sanctions which may be available to ADEQ by reason of Respondent's failure to comply with the requirements of this CAO. ADEQ reserves its rights to collect other penalties and fines pursuant to its enforcement authority in lieu of the stipulated penalties set forth above.

6. If any event, including, but not limited to, an occurrence of nature, causes or may cause a delay in the achievement of compliance by Respondent with the requirements or deadlines of this CAO, Respondent shall notify ADEQ in writing as soon as reasonably possible after it is apparent that a delay will result, but in no case after the due dates have passed. 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.

7. ADEQ may grant an extension of any provision of this CAO, provided that Respondent requests such an extension in writing and provided that 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. The burden of proving that any delay is caused by circumstances beyond the control of and without the fault of Respondent and the length of the delay attributable to such circumstances shall rest with Respondent. Failure to notify ADEQ promptly, as provided in the previous Paragraph of the ORDER AND

AGREEMENT, shall be grounds for a denial of an extension.

8. This CAO is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d), and therefore is not effective until thirty (30) calendar days after public notice of the CAO is given. ADEQ retains the right and discretion to rescind this CAO based on comments received within the thirty-day public comment period.

9. As provided by APC&EC Regulation 8, this matter is subject to being reopened upon Commission initiative or in the event a petition to set aside this CAO is granted by the Commission.

10. Nothing contained in this CAO shall relieve Respondent of any obligations imposed by any other applicable local, state, or federal laws, nor, except as specifically provided herein, shall this CAO be deemed in any way to relieve Respondent of responsibilities contained in the permit.

11. Nothing in this CAO shall be construed as a waiver by ADEQ of its enforcement authority over alleged violations not specifically addressed herein. In addition, this CAO does not exonerate Respondent from any past, present, or future conduct which is not expressly addressed herein, nor does it relieve Respondent of the responsibilities for obtaining any necessary permits.

12. By virtue of the signature appearing below, the individual represents that he or she is an Officer of Respondent, being duly authorized to execute and bind Respondent to the terms contained herein. Execution of this CAO by an individual other than an Officer of Respondent shall be accompanied by a resolution granting signature authority to said individual as duly ratified by the governing body of the entity.

SO ORDERED THIS 13 DAY OF February, 2017.

Becky W. Keogh  
BECKY W. KEOGH, DIRECTOR

ARKANSAS DEPARTMENT OF  
ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

H. G. TOLER & SON LUMBER COMPANY, INC.

BY: J. M. Grigsby (Signature)

John M. Grigsby (Typed or printed name)

TITLE: V.P. Gen Mgr.

DATE: 2-2-17