

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

AFIN: 88-00697

LIS No. 16-027

COVINGTON ENTERPRISES, INC.
- LOWELL QUARRY
HIGHWAY 264 EAST
SPRINGDALE, ARKANSAS 72757

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (hereinafter "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 (hereinafter "the Act"), Ark. Code Ann. § 8-4-101 *et seq.*, Arkansas Pollution Control and Ecology Commission (hereinafter "APC&EC") Regulation 7, APC&EC Regulation 8, APC&EC Regulation 18, and APC&EC Regulation 19.

The issues herein having been settled by agreement of Covington Enterprises, Inc. - Lowell Quarry (hereinafter "Respondent") and the Director of the Arkansas Department of Environmental Quality (hereinafter "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 an asphalt plant located at Highway 264 East in Springdale, Washington County, Arkansas.
2. ADEQ granted Respondent coverage under the Minor Source General Air Permit

for Hot Mix Asphalt Plants 1912-AGP-000 on November 1, 2011. Respondent was issued Permit Tracking Number 1912-AGP-034.

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. During the May 12, 2015 inspection, an ADEQ inspector observed that Respondent had an unpermitted 800 kW generator and associated 1200bhp stationary compression combustion engine. In addition, the same violation was sited in a previous inspection dated August 12, 2014. Such acts violate General Condition 16 of the Permit and therefore violate Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

7. ADEQ informed Respondent of the compliance issues identified in the August 12, 2014 inspection report in a letter dated August 21, 2014. In addition, ADEQ informed Respondent of the same compliance issues in the May 12, 2015 inspection report in a letter dated May 18, 2015. These letters were intended to provide the facility with an opportunity to review

violations and submit information Respondent deemed appropriate regarding the compliance issues.

8. In correspondence dated January 6, 2016, Respondent stated that Respondent submitted a letter dated September 19, 2014, stating that the 800kw generator and associated 1200bhp stationary compression engine would be placed on a trailer to make it a portable unit. However, on May 12, 2015 observations made by the ADEQ Inspector revealed Respondent failed to make the sources a portable unit. In addition, Respondent stated that Respondent submitted a letter dated June 17, 2015 to ADEQ personnel, stating that Respondent submitted an application to Ozark Electric Cooperative to convert to 100% commercial power.

9. Based upon Respondent stating that the facility will remain closed until the conversion to commercial power is completed, Respondent is requesting the \$3,200 civil penalty be dropped.

10. As of March 1, 2016, Respondent has converted to 100% commercial power supplied by Ozark Electric Cooperative.

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. This CAO addressing all violations addressed in the Findings of Fact.
2. In compromise and full settlement for instances of noncompliance specified in the FINDINGS OF FACT, Respondent agrees to pay the sum of **TWO THOUSAND FOUR HUNDRED DOLLARS (\$2,400.00)**. 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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 29 DAY OF April, 2016.

Becky W Keogh
BECKY W. KEOGH, DIRECTOR

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

COVINGTON ENTERPRISES, INC.

BY: [Signature] (Signature)

David Covington (Typed or printed name)

TITLE: President

DATE: 3-30-16