

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

RESPONDENTS:

O'REILLY AUTOMOTIVE STORES, INC. AND  
OZARK AUTOMOTIVE DISTRIBUTORS, INC.

REGARDING:

OZARK AUTOMOTIVE DISTRIBUTORS DC 8  
4350 STOCKTON DRIVE  
NORTH LITTLE ROCK, ARKANSAS 72117  
EPA ID No. ARR000003277  
AFIN 60-01979

LIS 16a-008

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (hereinafter "Order") is issued pursuant to the authority of the Arkansas Hazardous Waste Management Act, Ark. Code Ann. § 8-7-201 *et seq.*, the Arkansas Remedial Action Trust Fund Act, Ark. Code Ann. § 8-7-501 *et seq.*, and Arkansas Pollution Control and Ecology Commission (hereinafter "APC&EC") Regulation No. 23, APC&EC Regulation No. 8, and APC&EC Regulation No. 7. The issues herein having been settled by the agreement of Ozark Automotive Distributors, Inc. (hereinafter "Ozark") and O'Reilly Automotive Stores, Inc. (hereinafter "O'Reilly") (hereinafter collectively "Respondents") and the Arkansas Department of Environmental Quality (hereinafter "ADEQ"), it is hereby agreed and stipulated by all parties that the following Findings of Fact and Order and Agreement be entered.

FINDINGS OF FACT

1. Respondents' facilities are located at 4350 Stockton Drive, Pulaski County, Arkansas (hereinafter "the Site").

2. Ozark operates a distribution center at the Site to pack and ship automotive products to O'Reilly stores as well as collect returned merchandise to be redistributed and resold or to be disposed of as hazardous waste.
3. The Site is owned by O'Reilly. Ozark's facility at the Site is physically connected to an O'Reilly store, and the two share an EPA Identification Number.
4. In 2014, Ozark reported as a Small Quantity Generator of hazardous waste.
5. Ark. Code Ann. § 8-7-204(c) provides that each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment and authorizes ADEQ to assess an administrative civil penalty not to exceed twenty-five thousand dollars (\$25,000) per day for violations of any provision of the Arkansas Hazardous Waste Management Act (hereinafter "the Act") and any regulation or permit issued pursuant to the Act.
6. Ark. Code Ann. § 8-7-205(1) states, "It shall be unlawful for any person to ... [v]iolate any provisions of this subchapter or of any rule, regulation, permit, or order adopted or issued under this subchapter...."
7. On August 27, 2015, ADEQ conducted a Compliance Evaluation Inspection (hereinafter "CEI") at the Site. ADEQ mailed the CEI Report to Respondents on September 21, 2015 and the CEI Report is incorporated herein by reference.
8. Based on the findings of the August 27, 2015 CEI, ADEQ identified the following violations:
  - a. During the CEI, an O'Reilly employee indicated that the O'Reilly store at the site has previously accepted small quantities of hazardous waste paint solvent from Custom Colors of Arkansas (hereinafter "Custom Colors"), a mobile paint shop that is a Conditionally Exempt Small Quantity Generator of hazardous waste. The hazardous waste paint solvent from Custom Colors was then added to Ozark's hazardous waste stream. In order to accept and store hazardous waste from other generators, Respondents must possess an ADEQ hazardous waste permit as a treatment, storage, and disposal facility (hereinafter "TSDF"). At the time of the CEI, neither Respondent

was permitted as a TSDF. Failure to possess a TSDF permit while accepting and storing hazardous waste from other generators is a violation of APC&EC Regulation No. 23 § 270.1(c) which states in part, "RCRA requires a permit for the 'treatment', 'storage', and 'disposal' of any 'hazardous waste' as identified or listed in § 261 of this regulation...." Consequently, this is also a violation of Ark. Code. Ann. § 8-7-205(1).

9. On October 29, 2015, ADEQ received documentation from Respondents indicating that the acceptance and storage of hazardous waste from outside generators has ceased.
10. In settlement of the violations, Respondents agree to the following:

#### ORDER AND AGREEMENT

- I. Respondents shall perform the following:
  - a. Upon the effective date of this Order, Respondents shall submit documentation, including disposal manifests, to ADEQ for review and approval that all hazardous waste generated off-site is no longer accepted or stored at the Site.
  - b. Respondents shall be held jointly and severally liable for failure to comply with any and all obligations contained in this Order.
  - c. Upon the effective date of this Order, Respondents shall conduct an Internal Compliance Audit of all hazardous waste management activities. The Internal Compliance Audit shall be of sufficient scope to identify any instances of noncompliance with applicable hazardous waste management requirements, whether identified by the aforementioned CEI Report or not.
  - d. Within thirty (30) calendar days of the effective date of this Order, Respondents shall submit a report to ADEQ describing actions taken to achieve and maintain compliance with respect to any instances of noncompliance detected by the CEI Report and the Internal Compliance Audit. The report will be subject to ADEQ approval. If ADEQ does not approve the report, in whole or in part, because the actions taken by

Respondents were insufficient to achieve compliance with applicable requirements. Respondents shall undertake any additional actions identified by ADEQ in order to achieve and maintain compliance with the applicable requirements.

- e. Within sixty (60) calendar days of the effective date of this Order, Respondents shall conduct a Pollution Prevention Study (hereinafter "PPS") to investigate ways to reduce the amount of waste from the facility and submit a Report of Findings specific to the PPS to ADEQ for review and approval.
2. Respondents shall submit to ADEQ one (1) electronic and one (1) hard copy of all reports, documents, plans or specifications required under the terms of this Order.
3. All submittals required of the Order, excluding the requirement for the payment submittal in paragraph 5 below, shall be electronically emailed to [hesselbein@adeq.state.ar.us](mailto:hesselbein@adeq.state.ar.us) and submitted by Certified Mail or hand delivered to Josh Hesselbein, Enforcement and Inspection Branch, ADEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317.
4. All submittals shall be subject to applicable review fees pursuant to APC&EC Regulation No. 23 § 6(t).
5. In compromise and full settlement of the violations specified in the Findings of Fact, Respondents agree to pay a civil penalty of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) or one-half of the penalty, ONE THOUSAND TWO HUNDRED FIFTY DOLLARS (\$1,250.00) if this Order is signed and returned to Josh Hesselbein, Enforcement and Inspection Branch, Hazardous Waste Division, ADEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317, prior to 4:00 p.m. on January 8, 2016. Payment is due within thirty (30) calendar days of the effective date of this Order. Such payment shall be made payable to ADEQ, Attention: Fiscal Division, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317. In the event that Respondents fail to pay the civil penalty within the prescribed time, ADEQ shall be entitled to attorneys' fees and costs of collection, as well as all other lawful fees and penalties.

6. Respondents hereby designates a Contact Person who shall be responsible for overseeing the implementation of the requirements of this Order. The Contact Person shall communicate with ADEQ on all technical issues which arise under this Order and shall be empowered to agree on minor modifications in the implementation of any of the requirements of this Order when such modifications are deemed by ADEQ to further the purpose of this Order. Respondents may change their Contact Person by providing written notice of such change to ADEQ. The initial Contact Person shall be:

John Bounds  
Ozark Automotive Distributors, Inc.  
233 South Patterson Ave.  
Springfield, Missouri 65802  
Ph No. (417) 520-4589  
jbounds2@oreillyauto.com

7. All requirements by the Order and Agreement are subject to approval by ADEQ. In the event of any deficiencies, Respondents shall submit any additional information or changes requested, or take additional actions specified by ADEQ to correct any such deficiencies within the timeframe specified by ADEQ. Failure to adequately respond in writing within the timeframe specified by ADEQ constitutes a failure to meet the requirements established by this Order.
8. If Respondents fail to submit to ADEQ any reports or plans, or meet any other requirement of this Order within the applicable deadline established in the Order, ADEQ may assess stipulated penalties for delay in the following amounts:
- a. First day through the fourteenth day: \$250 per day
  - b. Fifteenth day through the thirtieth day: \$1,250 per day
  - c. Each day beyond the thirtieth day: \$2,500 per day

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 Respondents' failure to comply with the requirements of this Order.

9. If any event occurs, including but not limited to natural disasters, which causes or may cause a delay by Respondents in achieving the requirements of this Order, Respondents shall notify ADEQ in writing as soon as it is apparent that a delay may result. Such request shall be made prior to the deadline. The written notice shall describe in detail the anticipated length of delay, the precise cause of delay, the measures taken to address the delay and to be taken to minimize the delay, and the timetable by which those measures will be implemented.
10. ADEQ may grant a written extension of any provision of this Order, provided that Respondents requested such an extension in writing and provided that the delay or anticipated delay has been caused by circumstances beyond the control of and without the fault of Respondents. 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 fault of Respondents and the length of delay attributable to such circumstances shall rest with Respondents.
11. Nothing contained in this Order shall be construed as a waiver of ADEQ's enforcement authority over violations not specifically addressed herein, nor does this Order exonerate past, present, or future conduct which is not expressly addressed herein. Nothing contained herein shall relieve Respondents of any other obligations imposed by any local, state, or federal laws, nor shall this Order be deemed in any way to relieve Respondents of its responsibilities for obtaining or complying with any necessary permits or licenses.
12. This Order is subject to public review and comments in accordance with Ark. Code Ann. § 8-4-103(d) and is therefore not effective until thirty (30) calendar days after public notice of the Order is given. ADEQ retains the right and discretion to rescind this Order based on comments received within the thirty-day public comment period or based on any other considerations which may subsequently come to light. Additionally, this Order is subject to being reopened upon APC&EC initiative or in the event a petition to set aside this Order is granted by the Commission.

13. By virtue of the signature appearing below, the individual represents that he or she is an Officer of Ozark or O'Reilly, respectively, being duly authorized to execute and bind Respondents to the terms contained herein. Execution of this Order by an individual other than an Officer of Respondents 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 19<sup>th</sup> DAY OF January ~~2015~~ 2016



BECKY W. KEOGH  
DIRECTOR  
ARKANSAS DEPARTMENT OF  
ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

OZARK AUTOMOTIVE DISTRIBUTORS, INC.

BY: Signature 

Print or Type Name John Bounds

Title Safety/Environmental Coordinator

Date 01/04/16

APPROVED AS TO FORM AND CONTENT:

O'REILLY AUTOMOTIVE STORES, INC.

BY: Signature 

Print or Type Name John Bounds

Title Safety/Environmental Coordinator

Date 01/04/16