

**ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT, DIVISION OF
ENVIRONMENTAL QUALITY**

IN THE MATTER OF:

**MAHLE ENGINE COMPONENTS USA, INC.
2301 EAST 16th STREET
RUSSELLVILLE, ARKANSAS 72802
EPA ID No. ARR000007559
AFIN 58-00185**

LIS 20-

139

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (CAO) is issued pursuant to the authority of the Arkansas Hazardous Waste Management Act of 1979, Ark. Code Ann. § 8-7-201 *et seq.*, the Arkansas Remedial Action Trust Fund Act, Ark. Code Ann. § 8-7-501 *et seq.*, Arkansas Pollution Control and Ecology Commission (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 Mahle Engine Components USA, Inc. (Respondent) and the Division of Environmental Quality¹ (DEQ), 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. Respondent's facility ("the Facility") is located at 2301 East 16th Street, Russellville, Pope County, Arkansas.
2. The Facility manufactures various types of engine camshafts for large diesel engines from raw steel billets.

¹ Pursuant to Act 910 of 2019, the Arkansas Transformation and Efficiencies Act, the former Arkansas Department of Environmental Quality is now the Division of Environmental Quality in the newly created Department of Energy and Environment.

3. The Facility generates listed and characteristic hazardous waste from the camshaft production process, and through normal daily activities associated with site operations.
4. According to the 2018 Hazardous Waste Annual Report, submitted on January 31, 2019, the Facility notified as a small quantity generator (SQG) of hazardous waste.
5. APC&EC Regulation 23 defines a SQG as “a generator who generates less than 100kg of hazardous waste in a calendar month”.
6. 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 DEQ 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 (“the Act”) and any regulation or permit issued pursuant to the Act.
7. 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....”
8. APC&EC Regulation No. 23 § 279.10(b)(2)(i) states in part that mixtures of used oil and hazardous waste that solely exhibit one or more of the hazardous waste characteristics identified in Subsection C of Section 261 of this regulation are subject to regulation as hazardous waste under Sections 260 through 270 of this regulation rather than as used oil under Section 279, if the resultant mixture exhibits any characteristics of hazardous waste identified in Subsection C of Section 261 of APC&EC Regulation No. 23.
9. On March 6, 2019, DEQ conducted a Compliance Evaluation Inspection (CEI) at the Facility. The CEI report was mailed to Respondent on July 11, 2019 and is incorporated herein by reference.

10. Based on the findings of the March 6, 2019 CEI, DEQ identified the following violations of APC&EC Regulation 23:

- a) On January 14, 2019, Respondent shipped 5,962 gallons of oily sludge generated in used oil Tank B through Heritage Crystal Clean. A sample of the oily sludge was collected from Tank B on December 14, 2018 and Pace Analytical conducted a total analysis on the solids portion of the sample on January 15, 2019. The total analysis indicated Chromium was at 185 ppm, which is more than twenty (20) times the toxicity characteristic regulatory level of 5.0 ppm. In order to determine if a waste is a hazardous waste using total analysis, the total concentration is divided by twenty (20) to determine the toxicity characteristic level. This analysis indicated the toxicity characteristic level for Chromium was 9.25 ppm, which is above the toxic characteristic regulatory limit of 5.0 ppm for Chromium (D007), and was therefore a hazardous waste. Failure to make a hazardous waste determination prior to shipment violates APC&EC Regulation No. 23 § 262.11, which states in part, "a person who generates a solid waste, as defined in §261.2, must determine if that waste is a hazardous waste."
- b) As discussed in Paragraph 10a, analysis was conducted on the oily sludge sample from Tank B on January 15, 2019, documenting the oily sludge was above the toxic characteristic regulatory limit of 5.0 ppm for Chromium (D007). Analysis serves as documentation the oily sludge contained in Tank B was a toxic characteristic hazardous waste (D007) at the time of shipment. This hazardous waste shipment of 5,962 gallons was transported on a bill of lading by Heritage Crystal Clean to a Heritage Crystal Clean hub in Little Rock, Arkansas. Failure to prepare a manifest for hazardous waste prior to transport violates APC&EC Regulation No. 23 § 262.20(a)(1) which requires a

generator who offers for transport a hazardous waste for off-site treatment, storage, or disposal, must prepare a Manifest on EPA Form 8700-22 according to the instructions included in the appendix to § 262.

11. On July 11, 2019, the CEI Report was mailed to the Facility and is incorporated herein by reference.
12. In a response dated August 7, 2019 to the CEI Report, Respondent claimed the oily water was evaluated and determined to qualify for the used oil exemption listed in 40 CFR 279, given the TCLP analytical sampling taken on December 14, 2018, reported chromium at 9.25 ppm, below the maximum allowable limit of 10 ppm called out in 40 CFR 279.11. Additionally, Respondent stated the oily water was transported by Heritage Crystal Clean to their facility in Little Rock, AR, offloaded into their tank farm, and then transported to their Kilgore, TX facility. There, the treatment process included the removal and dewatering of the used oil. The used oil was then sent to the Crystal Clean re-refinery for recycling into a base lube product.
13. APC&EC Regulation No. 23 § 279.11 applies to used oil burned for energy recovery, and any fuel produced from used oil. Respondent states the used oil is being sent for re-refining into a base lubricant product. The used oil is not being burned for energy recovery or being produced as a fuel, therefore, APC&EC Regulation No. 23 Section 279.11 is not applicable.
14. On September 9, 2019, DEQ completed a review of the August 7, 2019 response to the CEI, by determining Respondent has not made a proper waste determination in accordance with APC&EC Regulation No. 23 Section 262.11.

ORDER AND AGREEMENT

Respondent and DEQ hereby stipulate and agree as follows:

1. Within thirty (30) calendar days of the effective date of this CAO, Respondent shall submit standard operating procedures to DEQ documenting that all hazardous waste streams are properly managed, including documentation of proper disposal.
2. Upon the effective date of this CAO, Respondent shall conduct an Internal Compliance Audit of all hazardous waste management units and related activities. The Internal Compliance Audit shall be of sufficient in scope to identify any instances of noncompliance with applicable hazardous waste management requirements, whether identified by the aforementioned CEI Report or not.
3. Within thirty (30) calendar days of the effective date of this CAO, Respondent shall submit a report to DEQ describing actions taken to achieve and maintain compliance with respect to any instances of noncompliance discovered by the Internal Compliance Audit. The report will be subject to DEQ approval. If DEQ does not approve the report, in whole or in part, because the actions taken by Respondent were insufficient to achieve compliance with applicable requirements, Respondent shall undertake any additional actions identified by DEQ in order to achieve and maintain compliance with the applicable requirements.
4. Within sixty (60) calendar days of the effective date of this CAO, Respondent shall conduct a Pollution Prevention Study (PPS) to investigate ways to reduce the amount of waste from the facility and submit a Report of Findings specific to the PPS to DEQ for review and approval.
5. Respondent shall submit to DEQ one (1) electronic and one (1) hard copy of all reports, documents, plans or specifications required under the terms of this CAO.
6. All submittals required of the CAO, excluding the requirement for the payment submittal in Paragraph 7 below, shall be emailed to OLRenforcement@adeq.state.ar.us and submitted by Certified Mail or hand delivered

to Gina Porter, Enforcement, Office of Land Resources, DEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317.

7. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent shall pay a civil penalty of FIVE THOUSAND FIVE HUNDRED DOLLARS (\$5,500.00) or one-half of the penalty, TWO THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$2,750.00) if this CAO is signed and returned to Gina Porter, Enforcement, Office of Land Resources, DEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317, within twenty (20) calendar days of receipt of this notice. Payment is due within thirty (30) calendar days of the effective date of this CAO. Such payment shall be made payable to DEQ and mailed to 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, DEQ shall be entitled to attorneys' fees and costs of collection, as well as all other lawful fees and penalties.
8. All requirements of the Order and Agreement are subject to approval by DEQ. In the event of any deficiencies, Respondent shall submit any additional information or changes requested, or take additional actions specified by DEQ to correct any such deficiencies within the timeframe specified by DEQ. Failure to adequately respond in writing within the timeframe specified by DEQ constitutes a failure to meet the requirements established by this CAO.
9. If Respondent fails to submit to DEQ any reports or plans, or meet any other requirement of this CAO within the applicable deadline established in the CAO, DEQ may assess stipulated penalties for delay in the following amounts:
 1. First day through the fourteenth day: \$250 per day
 2. Fifteenth day through the thirtieth day: \$1,250 per day
 3. 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 DEQ by reason of Respondent's failure to comply with the requirements of this Order.

10. Respondent shall notify DEQ within five (5) calendar days of knowledge of any delay or potential delay in complying with any provision of this CAO, specifying in detail the anticipated length of the delay, the precise cause of the delay, and the measures being taken to correct and minimize the delay. Such notification or request for extension shall be made in writing and prior to the deadline.
11. DEQ may grant a written extension of any provision of this CAO, provided that Respondent 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 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 fault of Respondent and the length of delay attributable to such circumstances shall rest with Respondent.
12. Nothing contained in this CAO shall be construed as a waiver of DEQ's enforcement authority over violations not specifically addressed herein, nor does this CAO exonerate past, present, or future conduct which is not expressly addressed herein. Nothing contained herein shall relieve Respondent of any other obligations imposed by any local, state, or federal laws, nor shall this CAO be deemed in any way to relieve Respondent of its responsibilities for obtaining or complying with any necessary permits or licenses.
13. This CAO 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 CAO is given. DEQ retains the right and discretion to rescind this

CAO 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 CAO is subject to being reopened upon APC&EC initiative or in the event a petition to set aside this CAO is granted by the Commission.

14. 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 as attested by the secretary of said entity. 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 20th DAY OF March 2020.

Becky W. Keogh

BECKY W. KEOGH

DIRECTOR

DIVISION OF ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

MAHLE ENGINE COMPONENTS USA, INC. BY:

Signature Clayton Brown

Print or Type Name CLAYTON BROWN

Title PLANT MANAGER

Date FEB 27, 2020

Bruce Phillips

BRUCE PHILLIPS
EHS COORDINATOR

02/27/2020