

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

A & B Timber, Inc.
PO Box 1184
Hampton, AR 71744

LIS NO. 21-017
AFINs: 07-00383
07-00384

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (CAO) 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.*, the Arkansas Solid Waste Management Act, Ark. Code Ann. § 8-6-201 *et seq.*, and the regulations and rules thereunder by the Arkansas Pollution Control and Ecology Commission (APC&EC).

The issues herein having been settled by the agreement of A & B Timber, Inc. (Respondent) and the Division of Environmental Quality¹ (DEQ or “Division”), it is hereby agreed and stipulated that the following FINDINGS OF FACT and ORDER AND AGREEMENT be entered.

FINDINGS OF FACT

1. DEQ investigated complaints alleging that Respondent improperly disposed of solid waste and caused pollution of waters of the state at a site located northwest of the intersection of Calhoun 53 and Calhoun 235, Hampton, Calhoun County, Arkansas (“Site 1”) and at another site located at 5865 Calhoun 40, Hampton, Calhoun County, Arkansas (“Site 2”).

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.

2. Respondent owns Site 1, and Site 1 contains a disused mining pit. Site 1 is not a permitted Solid Waste Disposal Facility and Respondent has no DEQ issued permits for this site.
3. Site 2 is not a permitted Solid Waste Disposal Facility and Respondent has no DEQ issued permits for this site.
4. Ark. Code Ann. § 8-4-217(a)(2)(3) and (b)(1)(E) provide:
 - (a) It shall be unlawful for any person to:
 - (2) Place or cause to be placed any sewage, industrial waste, or other wastes in a location where it is likely to cause pollution of any waters of this state;
 - (3) Violate any provisions of this chapter or of any rule, regulation, or order adopted by the [APC&EC] under this chapter or of a permit issued under this chapter by the [DEQ].
 - (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 this state.
5. DEQ regulates the disposal of solid waste pursuant to the Arkansas Solid Waste Management Act, Ark. Code Ann. § 8-6-201, et seq., and APC&EC Regulation 22.
6. Ark. Code Ann. § 8-6-203(9) defines solid waste as follows:
 - (9) “Solid waste” means any garbage or refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved

materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under 33 U.S.C. § 1342, or source, special nuclear, or by-products material as defined by the Atomic Energy Act of 1954, 42 U.S.C. § 2011 *et seq.*;

7. Under Ark. Code Ann. § 8-6-203(1), a “Disposal Site” means any place at which solid waste is dumped, abandoned, or accepted or disposed of for final disposition by incineration, landfilling, composting, or any other method.

8. Ark. Code Ann. § 8-6-205(a) states in part:

(a) It shall be illegal for any person:

- (1) To violate any provision of this subchapter or any rule, regulation, or order of the [APCEC] issued pursuant to this subchapter or of a permit issued under this subchapter by the [DEQ];
- (2) To construct, install, alter, modify, use, or operate any solid waste processing or disposal facility or disposal site without a permit from the Division;
- (3) To dispose of solid wastes at any disposal site or facility other than a disposal site or facility for which a permit has been issued by the Division;
- (5) To sort, collect, transport, process, or dispose of solid waste contrary to the rules, regulations, or orders of the Division or in such a manner or place as to create or be likely to create a public nuisance or a public health hazard or to cause or be likely to cause water or air pollution within the meaning of the Arkansas Water and Air Pollution Control Act, § 8-4-101 *et seq.*”

9. Ark. Code Ann. § 8-4-103(c)(1)(A) and 8-6-204(c) authorize 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 Arkansas Water and Air Pollution Control Act or the Arkansas Solid Waste Management Act and any regulation or permit issued pursuant to these Acts.

10. Pursuant to Ark. Code Ann. § 8-4-103(c)(1)(B) and 8-6-204(c), “[e]ach day of a continuing violation may be deemed a separate violation for purposes of penalty assessment.”

11. DEQ Office of Water Quality (OWQ) and the DEQ Office of Land Resources (OLR) investigated Site 1 and Site 2. The investigation revealed the following violations:

- a. DEQ observed leachate from woodchips that had been placed at Site 1 and Site 2 flowing towards and into waters of the state. At Site 2, DEQ measured the pH and the dissolved oxygen of the black colored leachate. The pH of the back leachate was 4.00 s.u., and the dissolved oxygen was 1.47 mg/L. The disposal of solid waste in such a manner as to cause or be likely to cause water pollution violates Ark. Code Ann. § 8-6-205(a)(5). Placing waste where it is likely to cause water pollution is also a violation of Ark. Code Ann. § 8-4-217(a)(2).
- b. Respondent had not applied and DEQ has not issued NPDES permit coverage to Respondent for any discharge to waters of the state. DEQ observed leachate from the woodchips flowing into waters of the state. This is a violation of Ark. Code Ann. § 8-4-217(b)(1)(E).
- c. DEQ observed Respondent was operating Site 1 and Site 2 as a disposal site for hardwood chips and sawdust without having obtained a permit from DEQ. Operating an unpermitted disposal site violates APC&EC Regulation 22.1502(a), which states, “Permit Required - No person shall construct, install, alter, modify, or operate any solid waste processing or disposal site without a permit from the Division.” Operating an unpermitted disposal site also violates Ark. Code Ann. § 8-6-205(a)(2).

d. DEQ observed Respondent was disposing of woodchips and sawdust at sites that is not permitted by DEQ. The DEQ inspector estimated the waste mass to be approximately 37,500 cubic yards at Site 1. An accurate measurement for Site 2 was not determined. Disposing of solid waste at an unpermitted site violates APC&EC Regulation 22.1502(b), which states in part, "Disposal Only at Permitted Facilities- No person shall dispose of solid waste at any disposal site or facility other than a disposal site or facility for which a permit has been issued by the Division." Disposing of solid waste at an unpermitted site also violates Ark. Code Ann. § 8-6-205(a)(3).

12. Following DEQ's investigations of Site 1 and Site 2, DEQ contacted Respondent concerning Site 1 and Site 2 and requested that Respondent provide a response to the violations observed. In that correspondence, DEQ stated that "Mr. Ables was informed hardwood wood waste was not considered beneficial fill material."

13. Respondent submitted a response to DEQ and stated that Respondent had taken actions at Site 1 and Site 2 to prevent leachate from the woodchips from reaching waters of the state. Respondent also stated woodchips were no longer being unloaded at Site 1 or Site 2. The response included photographs of the sites.

14. Following Respondent's responses, DEQ requested that Respondent provide additional information concerning how Respondent would remove the improperly disposed of solid waste at Site 1 and Site 2.

15. On November 14, 2019, Respondent met with DEQ staff from the OLR and the OWQ. At that meeting, Respondent informed DEQ that he was in the process of removing the woodchips that had been placed at Site 2 and that the woodchips would be removed from Site 1 once

removal activities at Site 2 were complete. DEQ informed Respondent that DEQ would require Respondent to provide documentation concerning the removal activities at Site 1 and Site 2.

16. On March 6, 2020, March 17, 2020, and July 14, 2020, DEQ contacted Respondent and requested an update on progress made towards removal activities at Site 1 and Site 2 and documentation of that progress.

17. On July 14, 2020, Respondent stated that half of the improperly disposed of solid waste from one of the sites had been addressed. Respondent could not provide an estimated date for completing removal activities.

18. On November 5, 2020, DEQ contacted Respondent by phone and requested an update on progress made towards removal activities at Site 1 and Site 2 and documentation of that progress.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall not dispose of any waste in any location where it is likely to cause pollution to lands or waters of the state.
2. Respondent shall not dispose of any solid waste at an unpermitted site and shall not operate an unpermitted disposal site.
3. Respondent shall take necessary actions to prevent the discharge of leachate from Site 1 and Site 2.
4. Within thirty (30) calendar days of the effective date of this CAO, Respondent shall submit to DEQ, for review and approval, a comprehensive report detailing the actions taken to remove woodchips from Site 1 and Site 2, including a description of the methods and practices for removing the waste, photographic evidence of the removal, and documentation of proper disposal or use of the woodchips.

5. Within sixty (60) calendar days of the effective date of this CAO, Respondent shall submit to the Division, for review and approval, a comprehensive Corrective Action Plan (CAP) developed and stamped by a Professional Engineer licensed in the state of Arkansas. The CAP shall include, at minimum, the methods and best available technologies that will be used to stop the discharge of water and leachate from Site 1 and Site 2, and remove the woodchips from Site 1 and Site 2, and plan to remediate any pollution of the affected lands and waters. The CAP shall include a reasonable milestone schedule with a date of final completion. Upon review and approval by DEQ, Respondent shall comply with the terms, milestone schedule, and final completion date contained in the approved CAP. The milestone schedule and final completion date shall be fully enforceable as terms of this CAO.
6. On or before the fifteenth (15th) day of the month following the effective date of this CAO, and each quarter thereafter until the approved CAP is complete, Respondent shall submit quarterly progress reports detailing the progress made towards removing woodchips from Site 1 and Site 2 and remediating the affected lands and waters of the state. Progress reports should include photographic evidence of the work completed.
7. A final completion report shall be submitted to the Division for approval on or before the date of final completion. The final completion report shall be signed and stamped by a Professional Engineer licensed in the state of Arkansas. The report shall certify that the woodchips have been removed, affected land and waters of the state have been satisfactorily remediated, and discharges from the Site 1 and Site 2 have ceased.
8. All documents required by this CAO to be submitted to DEQ, excluding the penalty payment, shall be emailed to WaterEnforcement@adeq.state.ar.us, submitted by Certified Mail,

or hand delivered Enforcement, Office of Water Quality, DEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317.

9. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of ELEVEN THOUSAND TWO HUNDRED DOLLARS (\$11,200.00) of which ELEVEN THOUSAND TWO HUNDRED DOLLARS (\$11,200.00) shall be conditionally SUSPENDED by DEQ. If Respondent fully complies with this Order, the suspended civil penalty of ELEVEN THOUSAND TWO HUNDRED DOLLARS (\$11,200.00) 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 ELEVEN THOUSAND TWO HUNDRED DOLLARS (\$11,200.00) shall be payable to DEQ on demand. Payment shall be made payable to the Division of Environmental Quality, and mailed to:

DEQ
Attention: 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.

10. All submittals required by this CAO 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 respond adequately in writing within the timeframe specified by DEQ constitutes a failure to meet the requirements established by this CAO.

11. Respondent consents and agrees to pay, on demand, to DEQ civil penalties according to the following schedule for failure to meet any deadlines required by this CAO as follows:

- a. First day through the 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 Respondent's failure to comply with this CAO.

12. 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 CAO, 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 CAO. 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.

13. DEQ may grant an extension of any provision of this CAO if Respondent requests such an extension in writing, and provided the delay is 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 no 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.

14. All requirements by the CAO 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 CAO.

15. This CAO is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d) and APC&EC Regulation No. 8 and shall not be effective until thirty (30) calendar days after public notice is given. DEQ retains the right to rescind this CAO based upon the comments received within the thirty (30) day public comment period. Notwithstanding the public notice requirements, the corrective actions necessary to achieve compliance shall be taken immediately. The publication of this CAO shall occur on or about the 10th or 25th day of the month following the date this CAO is executed. As provided by APC&EC Regulation No. 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.

16. Nothing in this CAO shall be construed as a waiver by DEQ of its enforcement authority over alleged violations not specifically addressed herein. Also, this CAO 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.

17. 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 1st DAY OF FEBRUARY, 2021.

Becky W. Keogh
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

A&B Timber, Inc

BY: [Signature]
(Signature)

RANDY ABLES
(Typed or printed name)

TITLE: OWNER

DATE: 2-1-2021