

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Eaton-Moery Environmental Services, Inc.
EMS Class I Landfill
P.O. Box 1025
Wynne, AR 72396

LIS No. 21- 046
Permit Tracking No. ARG160037(expired)
AFIN 01-00117

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (“Order”) is issued pursuant to the authority of the Arkansas Water and Air Pollution Control Act (“Act”), Ark. Code Ann. § 8-4-101 *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C. § 1311 *et seq.*, and the rules issued thereunder by Arkansas Pollution Control and Ecology Commission (APC&EC).

The issues herein having been settled by the agreement of the Eaton-Moery Environmental Services Inc., EMS Class I Landfill (Respondent) and the Division of Environmental Quality¹ (DEQ), it is hereby agreed and stipulated that the following FINDINGS OF FACT and ORDER AND AGREEMENT be entered.

FINDINGS OF FACT

1. Respondent operates a Class I landfill (“Facility”) located at 203 Possum Waller Road, DeWitt, Arkansas County, Arkansas.
2. Respondent discharges uncontaminated stormwater to La Grue Bayou, thence to the White River.

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. Respondent is regulated pursuant to the National Pollutant Discharge Elimination System (NPDES).

4. Pursuant to the federal Clean Water Act, 33 U.S.C. § 1311(a) *et seq.*, the NPDES program prohibits the discharge of pollutants except as in compliance with a permit issued under the NPDES program in accordance with 33 U.S.C. § 1342(a).

5. DEQ is authorized under the Arkansas Water and Air Pollution Control Act to issue NPDES permits in the state of Arkansas and to initiate an enforcement action for any violation of an NPDES permit.

6. 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 or order adopted by the [APC&EC] under this chapter or of a permit issued under this chapter by the [DEQ].

7. Ark. Code Ann. § 8-4-103(c)(1)(A) authorizes 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 Act and any rule or permit issued pursuant to the Act.

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

9. DEQ issued NPDES Sanitary Landfill Runoff General Permit, ARG160000, on September 2, 2014, with an effective date of March 1, 2015, and an expiration date of February 28, 2020. DEQ issued the renewal NPDES Sanitary Landfill Runoff General Permit,

ARG160000, on June 6, 2019, with an effective date of March 1, 2020, and an expiration date of February 28, 2025.

10. DEQ issued coverage under the NPDES Sanitary Landfill Runoff General Permit to Respondent on October 30, 2015, with an expiration date of February 28, 2020, and the Permit Tracking Number ARG160037 (“Permit”).

Failure to Renew Permit Coverage

11. Part 1, Section 1.3.4.1 of the Permit requires Respondent to submit a Recertification Notice of Intent (NOI) and all necessary information prior to the effective date of the renewal general permit.

12. On July 1, 2019, DEQ notified Respondent that the Permit would expire on February 28, 2020, and that in order to continue coverage under the NPDES Sanitary Landfill Runoff General Permit, a Recertification NOI must be submitted no later than January 31, 2020.

13. Respondent has operated this Facility beyond the expiration date of the Permit, February 28, 2020.

14. On November 23, 2020, Respondent submitted Recertification NOI to DEQ.

15. Respondent did not submit a complete Recertification NOI by February 29, 2020. Failure to submit the Recertification NOI by February 29, 2020, is a violation of Part 1, Section 1.3.4.1 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

Inspection Violations

16. On July 31, 2019, DEQ conducted a Compliance Evaluation Inspection of the facility. During the inspection, DEQ documented the following violations:

- a. Respondent does not have an operator with a Basic Industrial Wastewater Operator License. Failure to have a Basic Industrial Operator licensed by in

accordance with APC&EC Rule 3 is a violation of Part 1, Condition 1.2.4 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

- b. Leachate is seeping from the landfill and flowing into the stormwater ponds. Leachate entering the stormwater ponds is a violation of Part 1, Condition 1.41 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
- c. The stormwater pond levees are not being maintained as evidenced by erosion and woody vegetation on the levees. Failure to maintain all facilities and systems of treatment and control is a violation of Part 4, Condition 4.1 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

17. On August 30, 2019, DEQ notified Respondent of the inspection findings via letter and requested that Respondent submit a written response to each violation documented in the inspection report by September 13, 2019. Respondent did not submit a written response to the inspection report by September 13, 2019.

18. On January 13, 2020, DEQ again notified Respondent of the inspection findings via letter and requested that Respondent submit a written response to each violation documented in the inspection report by January 27, 2020.

19. On December 15, 2020, Respondent submitted a response to the July 31, 2019 inspection. The response provided an adequate response with a timeline for corrective actions to correct the documented violations.

20. On March 24, 2021, Respondent's consultant submitted an email on behalf of Respondent to DEQ requesting a penalty reduction. The email also stated that Respondent would repair the stormwater levees and complete the repairs to stop the leachate seeps.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall comply with the current NPDES Sanitary Landfill Runoff General Permit until either the effective date of coverage under the current NPDES Sanitary Landfill Runoff General Permit or the effective date of the termination of permit coverage.
2. Within sixty (60) calendar days of the effective date of this Order, Respondent shall submit documentation demonstrating that the corrective actions listed in Respondent's response dated December 15, 2020, have been completed.
3. Within thirty (30) calendar days of the effective date of this Order and prior to any discharge from the stormwater ponds, Respondent shall submit to DEQ laboratory analysis results demonstrating that no leachate constituents are present in the stormwater ponds.
4. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of One Thousand Dollars (\$1000.00) of which Seven Hundred Fifty Dollars (\$750.00) shall be conditionally SUSPENDED by DEQ. If Respondent fully complies with this Order, the suspended civil penalty of Seven Hundred Fifty Dollars (\$750.00) 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 One Thousand Dollars (\$1000.00) shall be payable immediately to DEQ on demand. Payment of Two Hundred Fifty Dollars (\$250.00) is due within thirty (30) calendar days of the effective date of this Order. Payment of the penalty shall be made payable to the Division of Environmental Quality, and mailed to the attention of:

Division of Environmental Quality
Fiscal Division
5301 Northshore Drive

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.

5. Failure to meet any requirement or deadline of this Order constitutes a violation of this Order. If Respondent should fail to meet any such requirements or deadlines, Respondent consents and agrees to pay on demand to DEQ stipulated penalties according to the following schedule:

- a. First day through 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 failure by Respondent to comply with the requirements of this Order.

6. 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 Order, 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 Order. 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. DEQ may grant an extension of any provision of this Order, 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 DEQ promptly, as provided in the preceding paragraph of this Section, shall be grounds for a denial of an extension.

8. All requirements by the Order 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 Order.

9. This Order is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d) and APC&EC Rule. 8 and shall not be effective until thirty (30) calendar days after public notice is given. DEQ retains the right to rescind this Order 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 Order shall occur on or about the 10th or 25th day of the month following the date this Order is executed. As provided by APC&EC Rule 8, this matter is subject to being reopened upon Commission initiative or in the event a petition to set aside this Order is granted by the Commission.

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

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 Order 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 MAY, 2021

Becky W. Keogh
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

Eaton Moery Environmental Services Inc. -EMS Class I Landfill

BY: Clarence Bryan Moery
(Signature)

CLARENCE BRYAN MOERY
(Typed or printed name)

TITLE: Owner

DATE: 5-12-21