

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT,
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

AFIN: 43-03612

LIS No. 21-078

CENTRAL ARKANSAS CONSTRUCTION & DEVELOPMENT, LLC
1711 GRAHAM ROAD
BENTON, AR 72015

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (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 (the Act), Ark. Code Ann. § 8-4-101 *et seq.*, the Removal of Asbestos Material Act, Ark. Code Ann. § 20-27-1001 *et seq.*, Arkansas Pollution Control and Ecology Commission (APC&EC) Regulation 7, APC&EC Regulation 8, and APC&EC Regulation 21.

The issues herein having been settled by agreement of Central Arkansas Construction & Development, LLC (Respondent) and the Director of 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. On or before August 20, 2020, and September 1, 2020, Respondent demolished or caused to be demolished structures formerly located at 12221 US Hwy 165 E (12221 Front Street), 12266 US Hwy 165 E (12265 Front Street), and SE Corner of US Hwy 165 E and AR-13

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 Arkansas Department of Energy and Environment.

AWEM

(7080 Front Street), Humnoke, Lonoke County, Arkansas 72072 (the Sites).

2. Ark. Code Ann. § 20-27-1007(2) and (4) provides:

It shall be unlawful for any person:

...

(2) To participate in any response action, demolition, or renovation contrary to the rules or orders issued under this subchapter or contrary to the Arkansas Water and Air Pollution Control Act, § 8-4-101 *et seq.*, and the Arkansas Solid Waste Management Act, § 8-6-201 *et seq.*, and the rules promulgated thereunder, whether or not such person is required to have a license or certificate pursuant to this subchapter;

...

(4) To violate any provision of this subchapter or any rule or order adopted or issued under this subchapter.

3. Ark. Code Ann. § 8-4-103(c)(1)(A) provides, “Any person that violates any provision of this chapter and rules, permits, or plans issued pursuant to this chapter may be assessed an administrative civil penalty not to exceed ten thousand dollars (\$10,000) per violation.”

4. Pursuant to Ark. Code Ann. § 8-4-103(c)(1)(B) as referenced by Ark. Code Ann. § 20-27-1002(a), “Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment.”

5. The structure(s) in question constitutes a “facility” as defined in APC&EC Regulation 21, Chapter 4.

6. Respondent meets the definition of an “owner or operator of a demolition or renovation activity” as defined in APC&EC Regulation 21, Chapter 4.

7. On August 12, 2020, DEQ personnel accepted a Notice of Intent (NOI) for a demolition project located at three (3) different locations: a vacant residential structure and well house located at 12221 US Hwy 165 E (12221 Front Street), Dismuke’s Affiliated Foods located at 12266 US Hwy 165 E (12265 Front Street), and an abandoned brick building located at the SE

Corner of US Hwy 165 E and AR-13 (7080 Front Street) in Humnoke, Arkansas. The NOI provided that Van Tassel-Proctor, Inc, would be the contractor responsible for the demolition activities at the three (3) locations.

8. On August 20, 2020, and September 1, 2020, DEQ personnel performed inspections of demolition activities located at the three (3) locations. The August 20, 2020 inspection revealed that the carport of the vacant residential structure had been demolished and a pile of debris generated from the demolition remained onsite. The well house, Dismuke's Affiliated Foods, and the abandoned brick building remained intact. The September 1, 2020 inspection revealed that the well house, Dismuke's Affiliated Foods, and the abandoned brick building had been demolished with a pile of debris located where Dismuke's Affiliated Foods and the abandoned brick building once stood.

9. During the inspection, it was determined that Respondent was the demolition contractor instead of Van Tassel-Proctor, Inc. Respondent confirmed they were hired by Van Tassel-Proctor, Inc. to complete the demolition activities at the three (3) locations.

10. APC&EC Reg. 21.610 states that changes in operator will require the submittal of a new NOI with a new notification period and a new fee.

11. APC&EC Reg. 21.601 states that for any demolition of a facility or facility component (even if no asbestos is present), the owner or operator shall submit a written NOI to the Department either by hand delivery, post-marked by U.S. Postal Service, or post-marked by a commercial delivery service at least ten (10) working days before any demolition activity begins.

12. Based on information obtained during the inspections, Respondent failed to submit a written NOI and appropriate fee to DEQ at least ten (10) working days prior to commencing the demolition activity. At the time of inspection, it was found that a vacant

residential structure and well house, Dismuke's Affiliated Foods, and an abandoned brick building had all been demolished. Such failure violates APC&EC Reg.21.601, APC&EC Reg.21.610 and therefore violates Ark. Code Ann. § 20-27-1007(4).

13. In an NOI dated October 5, 2020, Respondent provided details regarding demolition activities that occurred at the three (3) locations from August 24, 2020, through September 10, 2020.

14. On October 12, 2020, DEQ personnel accepted a NOI for the demolition project located at three (3) locations. The NOI indicated that Respondent as the contractor responsible for the demolition activities at the vacant residential structure and well house, Dismuke's Affiliated Foods, and an abandoned brick building.

15. In a letter dated October 27, 2020, DEQ personnel notified Respondent of the violations of Regulation 21. The letter was intended to give Respondent an opportunity to review the violations found and submit any additional information that Respondent deemed appropriate.

16. In correspondence dated March 8, 2021, DEQ informed Respondent that formal enforcement action was proceeding in this matter.

ORDER AND AGREEMENT

WHEREFORE, Respondent, neither admitting nor denying the factual and legal allegations contained in this CAO, and DEQ do hereby agree and stipulate as follows:

1. This CAO addresses all violations set forth 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 **NINE HUNDRED SIXTY DOLLARS (\$960.00)**. Payment is due within thirty (30) calendar days of the effective date of this CAO. Such payment shall be made payable to:

DEQ, 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 associated with collection.

3. All applicable submissions required by this CAO are subject to approval by DEQ. In the event of any deficiency, Respondent shall, within fifteen (15) calendar days of notification by DEQ, submit any additional information requested. Failure to respond adequately 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 this CAO. If Respondent fails to meet any limits, requirements, or deadlines, Respondent shall pay, on demand, to DEQ 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 DEQ'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 that may be available to DEQ by reason of Respondent's failure to comply with the requirements of this CAO. DEQ 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 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 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. DEQ 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 DEQ 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. DEQ 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.

ORIGINAL

10. Nothing in this CAO shall be construed as a waiver by DEQ of its enforcement authority over alleged violations not specifically addressed herein. In addition, this CAO neither exonerates Respondent from any past, present, or future conduct that 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 a Managing Member of Respondent, being duly authorized to execute and bind Respondent to the terms contained herein. Execution of this CAO by an individual other than a Managing Member of Respondent shall be accompanied by a resolution granting signature authority to that individual as duly ratified by the governing body of the entity.

SO ORDERED THIS 16TH DAY OF AUGUST, 2021.


JULIE LINCK, CHIEF ADMINISTRATOR
ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT,
DIVISION OF ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

CENTRAL ARKANSAS CONSTRUCTION & DEVELOPMENT, LLC

BY:  (Signature)

JUSTIN FERMENTER (Typed or printed name)

TITLE: Managing member

DATE: 8/9/2021