

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

**IN THE MATTER OF:**

**ECOTECH ENTERPRISES, INC.  
7100 COLONEL MAYNARD ROAD  
SCOTT, ARKANSAS 72142**

**LIS 21- 091  
EPA ID No. ARR000030023  
AFIN 60-04328**

**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 Remedial Action Trust Fund Act, Ark. Code Ann. § 8-7-501 *et seq.*, and 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 Ecotech Enterprises, Inc. (Respondent) and the Division of Environmental Quality<sup>1</sup> (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 (Facility) is located at 7100 Colonel Maynard Road in Scott, Pulaski County, Arkansas.
2. Respondent blends, packages, manufactures, and distributes wastewater treatment chemicals and products for use in various industrial and municipal potable water and wastewater treatment facilities.
3. 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

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<sup>1</sup> 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.

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.

4. 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[.]”

5. On June 27, 2018, DEQ received an anonymous citizen’s complaint alleging Respondent had hazardous chemical waste and sludge on the warehouse floor and trough, which were being dumped on the empty lot behind the facility. In addition, the complaint alleged that there were hundreds of totes containing expired and off-spec chemicals being improperly stored inside the facility. Further, the complaint alleged that chemical waste was being disposed of at a publicly owned treatment works (POTWs).

6. On July 18, 2018, DEQ conducted a Complaint Investigation at Respondent’s facility. During the Complaint Investigation, DEQ noted several containers of waste that could not be identified by facility personnel. Additionally wastewaters generated at the facility were collected in a 2,870-gallon Equalization Tank (EQ TANK), then pumped into 275-gallon containers and transported b respondent POTWs for disposal. According to Respondent, the wastewater in the EQ Tank is not analyzed prior to shipment off-site.

7. On August 29, 2018, an unannounced sampling event was conducted in conjunction with a Compliance Evaluation Inspection (CEI) to document potential unidentified hazardous waste streams.

8. APC&EC Regulation No. 23 defines a Large Quantity Generator (LQG), as a generator that generates 1,000 kilograms (2,200 lbs) per month or more of hazardous waste. During the

inspection, DEQ collected the following five (5) field measurements of pH for the Equalization Tank (EQ Tank: 1.39, 1.54, 1.62, 1.58, and 1.52. Since the pH of the wastewater within the EQ Tank was below 2, the wastewater would carry the characteristic hazardous waste code for corrosivity (D002). Respondent utilizes the EQ Tank to collect wastewater from spills and wash-down waters generated in Warehouse #1. Based on the information provided by Respondent, the facility had approximately 8,146 kilograms of corrosive characteristic hazardous waste (D002) accumulating within the EQ Tank at the time of the inspection. Therefore, Respondent must be in compliance with the regulations set forth for LQGs in APC&EC Regulation No. 23.

9. Based on the findings of the August 29, 2018 CEI, DEQ identified the following APC&EC Regulation 23 violations:

- a. Respondent failed to make waste determinations on numerous waste streams located throughout the Facility.
  - i. Respondent stated that the EQ Tank collects wastewater from spills and wash-down waters generated in Warehouse #1. Since the pH of the wastewater within the EQ Tank was determined to be below 2, the wastewater would carry the characteristic hazardous waste code for corrosivity (D002). At the time of the inspection, Respondent had not made a hazardous waste determination on wastewater within the EQ Tank.
  - ii. It was noted during the inspection that one (1) of the twenty-nine (29) product tanks located within Warehouse #1 appeared to be actively leaking into its secondary containment. Respondent indicated the 5,000-gallon tank contained product CARUSOL C liquid sodium permanganate. While on-site, DEQ personnel noted a large amount of sodium permanganate contaminated absorbent material located inside the tank's

secondary containment. According to Respondent, the sodium permanganate contaminated absorbent material was a waste and had been accumulating in the secondary containment for approximately three (3) months. According to the Material Safety Data Sheet (MSDS), CARUSOL C liquid sodium permanganate is categorized as an oxidizer and carries the characteristic hazardous waste code for ignitability (D001) when discarded. At the time of the inspection, Respondent had not made a hazardous waste determination on the waste sodium permanganate contaminated absorbent material located within the concrete secondary containment.

- iii. DEQ personnel observed a 275-gallon container of liquids and solids that was located on a concrete pad on the west side of the facility. This container was not marked or labeled with words that would identify its contents. While on-site, DEQ collected a field pH measurement of 12.91 for the liquid in the 275-gallon container, indicating that the liquid waste carries the characteristic hazardous waste code for corrosivity (D002). At the time of the inspection, Respondent had not made a hazardous waste determination on this waste stream.

As described in paragraphs 9(a)(i) through 9(a)(iii), three (3) violations of APC&EC Reg. 23 § 262.11 were observed. Failure to conduct adequate hazardous waste determinations is a violation of APC&EC Reg. 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 [.]” Not conducting hazardous waste determinations also is a violation of Ark. Code Ann. § 8-7-205(1).

- b. On October 1, 2018, Respondent provided documentation that two (2) containers of wastewater had been transported to the city of Stuttgart's POTW in 2017. These two (2) containers had a pH of 0.90. Therefore, at the time of shipment, the wastewater in these containers would have been a characteristic hazardous waste with the corrosive hazardous waste code of D002. Respondent was unable to provide hazardous waste manifests to DEQ for waste sent to or received by the city of Stuttgart's POTW. Failure to use manifests for the transportation of hazardous waste is a violation of APC&EC Regulation No. 23 § 262.20(a)(1) which states in part, "A generator who transports, or offers for transport a hazardous waste for offsite treatment, storage, or disposal...must prepare a manifest" according to instructions in Appendix I to Section 262. This failure to use manifests also violates Ark. Code Ann. § 8-7-205(1).
- c. As described in paragraph 9.b above, Respondent transported two (2) containers of wastewater to the city of Stuttgart's POTW in 2017 that had a pH of 0.90, making it a characteristic hazardous waste with the corrosive hazardous waste code of D002. Respondent had not obtained an Environmental Protection Agency (EPA) identification number prior to the transportation of hazardous waste off-site. Failure to obtain an EPA identification number prior to transporting hazardous waste is a violation of APC&EC Regulation No. 23 Section 262.12(a) which states, "A generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the Director or from EPA." This failure also violates Ark. Code Ann. § 8-7-205(1).
- d. During the CEI, DEQ observed that the EQ Tank was not labeled or marked with the words "Hazardous Waste." Additionally, the previously mentioned 275-gallon

container of waste sodium aluminate liquids and solids was not labeled or marked with the words "Hazardous Waste." Failure to properly label or mark containers and tanks violates APC&EC Regulation No. 23 § 262.34(a)(3) which states, "While being accumulated on-site, each container and tank must be labeled or marked clearly with the words "Hazardous Waste." This failure to label also violates Ark. Code Ann. § 8-7-205(1).

- e. The 275-gallon container of waste sodium aluminate liquids and solids was not marked with an accumulation start date. Failure to mark containers with an accumulation start date is a violation of APC&EC Regulation No. 23 § 262.34(a)(2) which states, "The date upon which each period of accumulation begins must be clearly marked and visible for inspection on each container." This failure further violates Ark. Code Ann. § 8-7-205(1).
- f. Additionally, the 275-gallon container of waste sodium aluminate liquids and solids had a large hole cut into the top of the container preventing it from being closed. Failure to keep a container closed while in storage violates APC&EC Regulation No. 23 § 265.173(a) which states, "A container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste." This failure also violates Ark. Code Ann. § 8-7-205(1).
- g. Following the inspection, DEQ personnel requested hazardous waste training records and documentation for Respondent's employees. The training documentation provided by Respondent did not contain any information regarding hazardous waste management procedures or how to respond to fires, explosions, communications, or alarm systems. Failure to provide required Hazardous Waste training is a violation of APC&EC Regulation No. 23 § 265.16(a)(1) which states, "Facility personnel must successfully complete a program of classroom

instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirement of this Section[.]”

This failure to train also violates Ark. Code Ann. § 8-7-205(1).

- h. DEQ observed that Warehouse #2 contained greater than one hundred (100) 275-gallon, 330-gallon, and 55-gallon containers stacked several rows deep and in close proximity to one another. This placement of containers does not allow for the unobstructed movement of personnel or fire protection equipment, spill control equipment, or decontamination equipment in the event of an emergency. Failure to maintain adequate aisle space violates APC&EC Regulation No. 23 § 265.35 which states, “The owner or operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency[.]” This failure to maintain aisle space also violates Ark. Code Ann. § 8-7-205(1).
- i. Respondent's representative stated that the local fire department had recently visited the Facility to discuss its role in case of an emergency. However, Respondent has not attempted to make arrangements with the police, emergency response teams, State emergency response teams, emergency response contractors, equipment suppliers, or the local hospital. This failure to make arrangements is a violation of APC&EC Regulation No. 23 § 265.37(a)(1) which states in part, “The owner or operator must attempt to make. . . arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working,



entrances to roads inside the facility, and possible evacuation routes.” This failure further violates Ark. Code Ann. § 8-7-205(1).

- j. Respondent did not have agreements with State emergency response teams, emergency response contractors, or equipment suppliers based on the potential need for services as appropriate for the type of waste handled at the Facility. This failure is a violation of APC&EC Regulation No. 23 § 265.37(a)(3) which states in part, “The owner or operator must attempt to make. . . agreements with State emergency response teams, emergency response contractors, and equipment suppliers”. This failure also violates Ark. Code Ann. § 8-7-205(1).
- k. Respondent had not made arrangements to familiarize the local hospital with the properties of hazardous waste handled at the facility. This failure is a violation of APC&EC Regulation No. 23 § 265.37(a)(4) which states, “The owner or operator must attempt to make. . . arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility”. This failure also violates Ark. Code Ann. § 8-7-205(1).
- l. DEQ requested to review a copy of Respondent’s contingency plan. On October 1, 2018, Respondent provided DEQ with a statement indicating procedures Respondent’s employees are to perform in the event air contaminants reach irritating levels. The statement did not contain any information documenting how the facility will minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste. This lack of documentation is a violation of APC&EC Regulation No. 23 § 265.51(a) which states, “Each owner or operator must have a contingency plan. . . designed to minimize hazards to human health or the environment from fires,



explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.” This failure to document also violates Ark. Code Ann. § 8-7-205(1).

- m. DEQ observed that the previously mentioned 275-gallon container of waste sodium aluminate liquids and solids, located on the west side of Warehouse #1, was not in good condition because it was cut open at the top. Since the container was damaged and unable to be closed, the contents should have been transferred to another container that was in good condition. Failure to transfer hazardous waste from a container that is not in good condition to one that is in good condition is a violation of APC&EC Regulation No. 23 § 265.171 which states in part, “If a container holding hazardous waste is not in good condition . . . the owner or operator must transfer the hazardous waste from this container to a container that is in good condition, or manage the waste in some other way that complies with the requirements of this Section.” This failure to transfer also violates Ark. Code Ann. § 8-7-205(1).
- n. The 275-gallon container, cut open at the top, also was being stored outdoors in an area that was subject to the elements. Storing the 275-gallon storage tote in this manner could cause it to overflow during a significant rain event, which could cause a release to the environment. Failure to store a container in a manner that prevents it from leaking is a violation of APC&EC Regulation No. 23 § 265.173(b) which states, “A container holding hazardous waste must not be opened, handled, or stored in a manner which may rupture the container or cause it to leak.” This storage failure also violates Ark. Code Ann. § 8-7-205(1).
- o. The previously mentioned EQ Tank was placed into operation by Respondent in 2011. Respondent never obtained a written certification from an independent,

qualified, Arkansas-registered professional engineer (P.E.) that the design and installation of the new tank system, and its components, are structurally sufficient and acceptable for storing and treating hazardous waste. This lack of certification is a violation of Regulation No. 23 § 265.192(a), which states in part that, “Owners or operators of new tank systems or components must. . . obtain a written assessment reviewed and certified by an independent, qualified, Arkansas-registered professional engineer in accordance with § 270.11(d) of this regulation attesting that the system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste.” This lack of certification also constitutes a violation of Ark. Code Ann. § 8-7-205(1).

- p. Respondent’s failure to obtain a written assessment, reviewed and certified by an Arkansas-registered P.E. also violates APC&EC Regulation No. 23 § 265.192(b), which states in part, “...Prior to covering, enclosing, or placing a new tank system or component in use, an independent, qualified installation inspector or an independent, qualified, Arkansas-registered professional engineer, either of whom is trained and experienced in the proper installation of tank systems, must inspect the system or component for the presence of any of the following items: (1) Weld breaks; (2) Punctures; (3) Scrapes of protective coatings; (4) Cracks; (5) Corrosion; (6) Other structural damage or inadequate construction or installation.” This failure also constitutes a violation of Ark. Code Ann. § 8-7-205(1).
- q. According to the documentation provided by Respondent on October 1, 2018, no formal inspections are conducted on the EQ Tank. Failure to inspect tank systems daily is a violation of APC&EC Regulation No. 23 § 265.195(a) which states, “The owner or operator must inspect, where present, at least once each operating day, data gathered from monitoring and leak detection equipment. . . to ensure

that the tank system is being operated according to its design.” This lack of inspection documents also constitutes a violation of Ark. Code Ann. § 8-7-205(1).

- r. According to the documentation provided on October 1, 2018, Respondent transported two (2) containers of wastewater to the city of Stuttgart’s POTW in 2017. These two (2) containers had a pH of 0.90. Therefore, at the time of shipment, the wastewater in these containers would have been a characteristic hazardous waste with the corrosive hazardous waste code of D002. Respondent has a permit to transport hazardous materials but not hazardous waste. This is a violation of APC&EC Regulation No. 23 § 263.13(a) which states, “Any person who transports hazardous waste in, from, or through the State of Arkansas shall comply with the permitting and other requirements of the Arkansas Highway and Transportation Department and the Arkansas Motor Carrier Act.” This also constitutes a violation of Ark. Code Ann. § 8-7-205(1).
- s. During the inspection, waste liquids, which were observed on the ground both inside and outside of the facility, were sampled for field pH of the seven (7) field pH measurements that were taken, three (3) field measurements had a pH of less than 2. Therefore, these three field measurements would be considered characteristic hazardous waste with the corrosive hazardous waste code of D002. In addition, a field pH measurement of an unknown liquid was taken on the outside of the facility. This unknown liquid was observed on the wash pad on the west side of warehouse #1. This pH value was 1.61, indicating that the unknown liquid is a characteristic hazardous waste with the corrosive hazardous waste code of D002. Allowing corrosive characteristic waste to accumulate on the ground, both inside and outside of the facility, constitutes engaging in hazardous waste management contrary to APC&EC Regulation No. 23. This act violates APC&EC

Regulation No. 23 Section 2(d) which states the following actions shall be considered violations of the Act, subject to penalties of the Act, “To engage in hazardous waste management contrary to the provisions of this Regulation or in such a manner or place as to create or as likely to be created a public health hazard or to cause water or air pollution within the meaning of the Arkansas Water and Air Pollution Control Act, as amended (A.C.A. §§ 8-4-201 et seq.)”

This act also constitutes a violation of Ark. Code Ann. § 8-7-205(1)

10. On November 9, 2018, the CEI Report was mailed to the Facility.
11. On December 14, 2018, Respondent’s consultant submitted a response to the CEI Report indicating Respondent’s intent to implement operational changes to eliminate the generation of hazardous waste or at a minimum be a small quantity generator. The response submitted to DEQ did not adequately address the violations.
12. On September 10, 2020, DEQ issued a proposed CAO to Respondent.
13. On November 10, 2020, DEQ met with Respondent and Respondent’s consultant to discuss changes that have been made at the facility to eliminate the generation of Hazardous Waste.
14. Submittals received by DEQ on October 14, 2020, November 16, 2020, and March 1, 2021, contained documentation indicating all violations cited in the August 29, 2018 CEI report have been corrected.

### **ORDER AND AGREEMENT**

In settlement of the violations, Respondent agrees to the following:

1. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent shall pay a reduced civil penalty of FIVE THOUSAND THREE HUNDRED EIGHTY ONE DOLLARS (\$5,381.00). Payment is due within thirty (30) calendar days of the

effective date of this CAO. Such payment shall be made payable 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, as well as all other lawful fees and penalties.

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

3. 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:

- 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 DEQ by reason of Respondent's failure to comply with the requirements of this CAO.

4. 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.

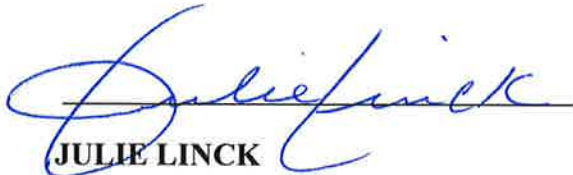
5. DEQ may grant a written extension of any provision of this CAO, provided that Respondent requested such an extension in writing and provided that the delay or anticipated delay has been caused by circumstances beyond the control of and without the fault of Respondent. The time for performance may 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.

6. 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.

7. 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.

8. 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 15 DAY OF September 2021.



JULIE LINCK

CHIEF ADMINISTRATOR, ENVIRONMENT

**APPROVED AS TO FORM AND CONTENT:**

ECOTECH ENTERPRISES, INC.

BY: \_\_\_\_\_

(Signature)



Joseph A. Luzzi

(Typed or printed name)

TITLE: \_\_\_\_\_

President

DATE: \_\_\_\_\_

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