

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT,
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

AFIN: 23-00041

LIS No. 21-130

DENVER ROLLER, INC.
-CRESTLAWN CREMATORY AND MEMORIAL PARK
472 US 64 EAST
CONWAY, AR 72033

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.*, Arkansas Pollution Control and Ecology Commission (APC&EC) Regulation 7, APC&EC Regulation 8, APC&EC Regulation 18, and APC&EC Regulation 19.

The issues herein having been settled by agreement of Denver Roller, Inc. - Crestlawn Crematory and Memorial Park (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. Respondent owns and operates a crematory incinerator located at 472 Hwy 64 East in Conway, Faulkner County, Arkansas.

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.

2. The Air Permit referenced in this CAO is the General Air Permit for Minor Source Animal/Human Remains Incinerator Facilities (the Permit). Respondent is assigned Tracking No. 1976-AGP-035, which indicates authority to operate under the Permit. The Permit was issued on August 23, 2021.

3. 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 Arkansas Pollution Control and Ecology Commission under this chapter or of a permit issued under this chapter by the Division of Environmental Quality;

4. 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.”

5. Pursuant to Ark. Code Ann. § 8-4-103(c)(1)(B) as referenced by Ark. Code Ann. § 8-4-304, “Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment.”

6. On August 10, 2021, DEQ personnel performed a compliance inspection of Respondent’s facility. The inspection covered the reporting period of May 2017 through June 2021.

7. Specific Condition 10 of the Permit requires Respondent to keep records of the secondary chamber’s start and mid-cycle temperatures each time the unit is in operation.

8. Specific Condition 15 of the Permit requires Respondent to conduct weekly

visible emissions (VE) observations in order to determine proper operation of the equipment and to keep records of these observations on-site and available.

9. Specific Condition 20 of the Permit requires Respondent to start up and maintain a temperature of 1600°F at the pathological incinerator.

10. During the inspection, it was found that Respondent failed to properly perform VE observations at Incinerator Power Pack II Ultra (Unit 1) and Incinerator Super Power Pack 2.0 (Unit 2) during the reporting period. There was one (1) instance where Respondent failed to conduct a VE observation at Unit 1. There were two (2) instances where Respondent failed to conduct VE observations at Unit 2. Such failures violate Specific Condition 15 of the Permit and therefore violates Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

11. The inspection also found that Respondent failed to maintain a starting temperature of 1600°F at Unit 1 and Unit 2. There were a total of twenty (20) instances where the starting temperature was below the minimum temperature of 1600°F at Unit 1 and Unit 2 (Table 1 and Table 2). There were a total of seven (7) instances where the mid-cycle temperature fell below the minimum temperature at Unit 1 and Unit 2 (Table 3). There was one instance where Respondent failed to record a mid-cycle temperature at Unit 2 (Table 4).

Table 1		
	Date	Temperature (°F)
Unit 1	10/1/2019	1400
	10/2/2019	1140
	11/25/2019	1590
	1/4/2020	1570
	6/20/2020	1571
	7/13/2020	1592
	8/1/2020	1575

Table 2		
	Date	Temperature (°F)
Unit 2	7/5/2019	1590
	8/30/2019	1592
	10/2/2019	1573
	11/23/2019	1465
	11/23/2019	1146
	1/4/2020	1498
	5/31/2020	1568
	6/20/2020	1567
	7/13/2020	1581
	8/22/2020	1596
	10/3/2020	1594
	11/16/2020	1558
	11/28/2020	1564

Table 3		
	Date	Temperature (°F)
Unit 1	1/7/2020	1522
	3/31/2021	1150
	6/17/2021	1514
	6/26/2021	1519
Unit 2	1/5/2019	1573
	10/28/2019	1555
	9/9/2020	1468

Table 4		
	Date	Temperature (°F)
Unit 2	11/29/2019	None Recorded

Such failures violate Specific Conditions 10 and 20 of the Permit and therefore violates Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

12. In a letter dated August 25, 2021, DEQ personnel notified Respondent of the violations found during the August 2021 inspection. This letter was intended to provide Respondent with the opportunity to review the violations of Specific Condition 15 and Specific Condition 20 and to submit any additional information Respondent deemed appropriate.

13. In a response dated October 4, 2021, Respondent stated that the violations to Specific Condition 15 were due to errors in the machine thinking that the unit was running when the unit was in fact in cool down. Respondent also stated that the three (3) instances of missing VE observations were due to a policy where the performance of VE observations occurred every Wednesday. Respondent stated the policy had been updated, VE observations would be performed the beginning of each week or until an observation is completed for the week. The response also supplied records for the violations to Specific Condition 20. Respondent stated that the records that reflect temperatures below 1600°F should reflect that the records were above the minimum temperature.

14. In an emailed correspondence dated October 18, 2021, DEQ personnel informed Respondent that the violations found during the inspection were routing through formal enforcement channels.

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 referenced in the Findings of Fact.
2. In compromise and full settlement of the violations specified in the FINDINGS OF FACT, Respondent agrees to pay a civil penalty of **THREE THOUSAND NINE HUNDRED TWENTY DOLLARS (\$3,920.00)**, or one-half of the penalty, **ONE THOUSAND NINE HUNDRED SIXTY DOLLARS (\$1,960.00)** if this CAO is signed and returned to Air Enforcement Section, DEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317,

prior to 4:00 p.m. on **December 23, 2021**. 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 (30) 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. Except as specifically provided herein, nothing contained in this CAO shall be deemed in any way to relieve Respondent of responsibilities contained in the permit.

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 relieves 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 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 that individual as duly ratified by the governing body of the entity.

[Handwritten signature]

SO ORDERED THIS 13TH DAY OF DECEMBER, 2021.

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

APPROVED AS TO FORM AND CONTENT:

DENVER ROLLER, INC.
-CRESTLAWN CREMATORY AND MEMORIAL PARK

BY: Tom Compton (Signature)

Tom COMPTON (Typed or printed name)

TITLE: VICE PRESIDENT

DATE: 12-2-21

[Faint red stamp]