

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Terra Renewal Services, Inc.-Pulaski County
3308 Bernice Avenue
Russellville, Arkansas 72802

LIS No. 21- 137
Permit No. 5020-WR-2
AFIN 60-04273

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (“Order”) 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.*, 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 Terra Renewal Services, Inc.-Pulaski County (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. Respondent operates a wastewater and biosolids collection, haulage, reuse, and disposal services company located at 3308 Bernice Avenue, Russellville, Pope County, Arkansas.
2. Respondent land applied wastewater at a site located at GPS coordinates 34.3014°N, 92.1049°W, in Pulaski County, Arkansas (“Land Application Site”).

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 Arkansas Water and Air Pollution Control Act (“Act”), Ark. Code Ann. § 8-4-101 *et seq.*

4. DEQ is authorized under the Act to issue permits in the state of Arkansas for the operation of disposal systems or any part of them and to initiate an enforcement action for any violation of a permit issued pursuant to the Act.

5. Ark. Code Ann. § 8-4-217(a) provides:

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

6. 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 regulation or permit issued pursuant to the Act.

7. 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.”

8. DEQ issued No-Discharge Water Permit 5020-WR-2 (“Permit”) to Respondent on August 30, 2018. The Permit became effective on September 1, 2018, and expires on August 31, 2023.

9. On May 11 and May 12, 2021, DEQ conducted an inspection of the land application site. The inspection revealed the following violations:

- a. Respondent land applied waste to fields in a manner that resulted in ponding and surfacing on the Land Application Site. This is a violation of Part II, Condition 11 of the Permit and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).
- b. On May 11, 2021, Respondent land applied twelve to thirteen (12–13) loads (~4500 gallons/load) of waste to field BR-9 and seven (7) loads (~4500 gallons/load) of waste to field BR-12. The National Weather service forecasted a chance of precipitation of 90% for May 11, 2021. This is a violation of Part II, Condition 13 of the Permit and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).
- c. Respondent land applied waste on field BR-9 when the soil was saturated. At the time of inspection, multiple areas of the field had puddles of water on the surface indicative of saturated soils. Additionally, the application equipment severely rutted the field during land application, which is also a sign the soil was saturated. This is a violation of Part II, Condition 13 of the Permit and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).
- d. A 100-foot buffer distance from the ordinary high water mark of the adjacent waterbody was not flagged along the southern border of field BR-9. This is a violation of Part II, Condition 18 of the Permit and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

10. On May 25, 2021, DEQ notified Respondent via letter of the inspection results and requested a response to the violations and additional records be submitted to DEQ by June 11, 2021.

11. On June 11, 2021, Respondent submitted an email response to the violations to DEQ.

12. Respondent, without admitting or denying the truth or falsity of any of the above Findings of Fact, allegations, or issues currently in dispute, wishes to avoid the uncertainty of litigation. The Parties agree to settle and resolve their difference by entering into this Order.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall cease disposal of industrial waste at the permitted locations unless Respondent can conduct that activity pursuant to the conditions of the Permit.
2. Upon the effective date of this Order, Respondent shall submit to DEQ a quarterly report that shall contain the Land Application Site inspection records, land application records, and load tickets records. The submission of the quarterly reports shall continue for one (1) year from the effective date of this Order.
3. In compromise and full settlement of the violations specified in the Findings Thirty-three Thousand Six Hundred Dollars (\$33,600.00), or one-half of the full civil penalty of Sixteen Thousand Eight Hundred Dollars (\$16,800.00), if this Order is signed and returned to the DEQ's Office of Water Quality Enforcement Branch, 5301 Northshore Drive, North Little Rock, Arkansas, 72118-5317, within twenty (20) calendar days of receipt of this Order. Payment is due within thirty (30) calendar days of the effective date of this Order. Such payment of the penalty shall be made payable to the Division of Environmental Quality, and mailed to the attention of:

DEQ, Fiscal Division
5301 Northshore Drive
North Little Rock, AR 72118

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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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 as attested by the secretary of said entity. Execution of this Order by an individual other than a Managing Member of Respondent shall be accompanied by a resolution granting signature authority to said individual as duly ratified by the governing body of the entity.

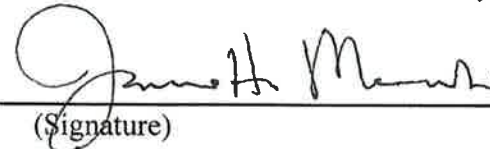
SO ORDERED THIS 13TH DAY OF DECEMBER, 2021.



JULIE LINCK, CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

Terra Renewal Services, Inc.-Pulaski County

BY: 

(Signature)

Jimmy Mardis

(Typed or printed name)

TITLE: Chief Environmental Officer

DATE: 12/02/2021