

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

IN THE MATTER OF:

AFIN: 88-01601

LIS No. 22-012

CUSTOM WOOD RECYCLING, INC.
11198 GAUGE ROAD
DANVILLE, ARKANSAS 72833

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, APC&EC Regulation 19, and APC&EC Regulation 26.

The issues herein having been settled by agreement of Custom Wood Recycling, Inc. (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 wood recycling facility and an air incinerator curtain located at 11198 Gauge Road in Danville, Yell County, Arkansas.
2. The Air Permit referenced in this CAO is the General Air Permit for Title V Air

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.

Curtain Incinerators 2370-AGP-000 (the Permit). Respondent is assigned Tracking No. 2370-AGP-015, which indicates authority to operate under the Permit. The Permit was issued on March 5, 2020.

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. Respondent’s facility is subject to the provisions of 40 C.F.R. Part 60, Subpart CCCC- Standards of Performance for Commercial and Industrial Solid Waste Incineration Units (Subpart CCCC).

7. On July 21, 2021, DEQ personnel conducted a full compliance inspection of Respondent’s facility.

8. The inspection covered the reporting period of July 2020 through June 2021.

9. Specific Condition 26 of the Permit states that the permittee must conduct an initial test for opacity as specified in § 60.8. After the initial test for opacity, the permittee must

conduct annual tests no more than 12 calendar months following the date of the previous test. The permittee must use Method 9 of Appendix A to Part 60 to determine compliance with the opacity limitation.

10. Records reviewed during the inspection indicated that Respondent failed to conduct the initial opacity testing at the air incinerator curtain within 180 days of startup. The facility began operations on May 9, 2020. The initial opacity testing was required to be conducted on or before September 5, 2020. Such failure violates Specific Condition 26 of the Permit and therefore violates Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304. Such failure also violates Subpart CCCC.

11. In a letter dated July 27, 2021, DEQ informed Respondent of the compliance issues identified in the inspection conducted on July 21, 2021. This letter was intended to give Respondent an opportunity to review the issues identified and submit any additional information Respondent deems appropriate.

12. On August 30, 2021, Respondent submitted a response to the July 27, 2021 letter. Respondent stated that the facility has contacted a testing company and is in the process of scheduling an opacity test to be conducted at the air incinerator curtain.

13. On October 1, 2021, Respondent submitted to DEQ a stack test protocol form for opacity testing to be conducted at the air incinerator curtain on October 15, 2021.

14. On October 29, 2021, Respondent submitted test results for opacity testing that was conducted at the air curtain incinerator on October 15, 2021.

15. A review of the test results indicated that Respondent was in compliance with the permitted opacity limits at the time of testing. The startup opacity limit is 35 % and the normal

operating opacity limit is 10%. The opacity recording during startup was 17.3% and the opacity recording during normal operations was 8.4%.

16. In a letter dated November 2, 2021, DEQ informed Respondent that a review of the opacity test results indicated that the air curtain incinerator was in compliance with the permitted opacity limits at the time of the test.

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 contained 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 **ONE THOUSAND TWO HUNDRED DOLLARS (\$1,200.00)**. 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 (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.


SO ORDERED THIS 17th DAY OF FEBRUARY, 2022.



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

APPROVED AS TO FORM AND CONTENT:

CUSTOM WOOD RECYCLING, INC.

BY:  (Signature)

Bryan Perry (Typed or printed name)

TITLE: Vice President

DATE: 2/7/2022

