

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

IN THE MATTER OF:

AFIN: 88-00342

LIS No. 22-041

EMERY SAPP & SONS, INC.
d/b/a EMERY SAPP AND SONS – BERRYVILLE FACILITY
107 COUNTY RD. 704
BERRYVILLE, AR 72616

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 Emery Sapp & Sons, Inc. d/b/a Emery Sapp and Sons – Berryville Facility (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 hot mix asphalt facility located at 107 County Rd. 704 in Berryville, Carroll 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 Hot Mix Asphalt Facilities 1912-AGP-000 (the Permit). Respondent is assigned Tracking No. 1912-AGP-054, which indicates authority to operate under the Permit. The Permit was issued on August 25, 2016.

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. Specific Condition 14 of the Permit requires Respondent to conduct weekly visible emission (VE) observations at the facility in order to determine proper operation of the baghouse(s). Records of these VE observations shall be kept on-site and be made available to DEQ personnel upon request.

7. On September 15, 2021, DEQ personnel conducted an inspection of Respondent’s facility for the inspection review period of July 1, 2020, through August 31, 2021.

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8. The inspection revealed Respondent failed to document weekly VE observations at the facility from January 1, 2020, through September 15, 2021. Such failure violates Specific Condition 14 of the Permit and therefore violates Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

9. On September 21, 2021, DEQ received Respondent's Notice of Intent to renew its General Air Permit for Minor Source Hot Mix Asphalt Facilities 1912-AGP-000 that was to expire on October 31, 2021.

10. In correspondence dated September 23, 2021, DEQ informed Respondent of the compliance issue identified during the inspection conducted on September 15, 2021. The letter was intended to provide Respondent with the opportunity to review the violation and submit any additional information Respondent deemed appropriate regarding the compliance issue.

11. On October 6, 2021, DEQ reissued Respondent the Permit with the same assigned Tracking No. 1912-AGP-054. The reissued permit's effective date is November 1, 2021, and expires on October 31, 2026.

12. On November 4, 2021, DEQ received Respondent's response to DEQ's September 23, 2021 correspondence regarding the inspection findings.

13. Respondent stated that since the inspection they have provided training to facility personnel on proper recording of visible emissions observations and setup an electronic documentation system to ensure future compliance.

14. In correspondence dated December 3, 2021, DEQ informed Respondent that formal enforcement action was proceeding in this matter.

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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. To demonstrate compliance with Specific Condition 14 of the Permit that went into effect on November 1, 2021, Respondent shall, for a period of three (3) months, submit monthly copies of its visible emissions observations records. These records shall be submitted by the 15th day of the month following the month which the records represent. The table below details the months for which the reports are to represent and their respective due dates.

Incinerator Run Logs	
Month/Year	Due Date
March 2022	April 15, 2022
April 2022	May 15, 2022
May 2022	June 15, 2022

2. In compromise and full settlement of the violations specified in the FINDINGS OF FACT, Respondent agrees to pay a civil penalty of **TWO THOUSAND NINE HUNDRED FORTY DOLLARS (\$2,940.00)**, or one-half of the penalty, **ONE THOUSAND FOUR HUNDRED SEVENTY DOLLARS (\$1,470.00)** 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 **March 18, 2022**. 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

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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

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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.

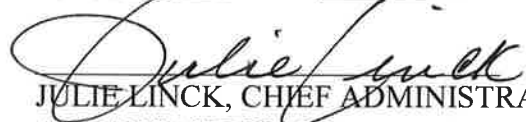
9. Nothing contained in this CAO shall relieve Respondent of any obligations imposed by any other applicable local, state, or federal laws. Except as specifically provided herein, nothing contained in this CAO shall be deemed in any way to relieve Respondent of

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 29TH DAY OF MARCH, 2022.


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

APPROVED AS TO FORM AND CONTENT:

EMERY SAPP & SONS, INC.
d/b/a EMERY SAPP AND SONS – BERRYVILLE FACILITY

BY:  (Signature)

Shawn Woodsmall (Typed or printed name)

TITLE: Environmental Manager

DATE: March, 16 2022

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