

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Clanton Transport LLC
P.O. Box 248
Hermitage, AR 71647

LIS No. 22- **067**
Permit No. AR0053295 (PENDING)
AFIN 06-00983

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (“Order”) 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.*, the Federal Water Pollution Control Act, 33 U.S.C. § 1311 *et seq.*, and the regulations and rules issued thereunder by Arkansas Pollution Control and Ecology Commission (APC&EC).

The issues herein having been settled by the agreement of the Clanton Transport LLC (Respondent) and 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 operates a commercial transportation log yard (“site”) located on Highway 63 West, Hermitage, Bradley County, Arkansas.
2. Respondent is regulated pursuant to the National Pollutant Discharge Elimination System (NPDES).

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. Pursuant to the federal Clean Water Act, 33 U.S.C. § 1311(a) *et seq.*, the NPDES program prohibits the discharge of pollutants except as in compliance with a permit issued under the NPDES program in accordance with 33 U.S.C. § 1342(a).

4. DEQ is authorized under the Act to issue NPDES permits in the state of Arkansas and to initiate an enforcement action for any violation of an NPDES permit.

5. Ark. Code Ann § 8-4-217(a)(3) provides:

(a) It shall be unlawful for any person to:

...

(3) Violate any provision 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 [Division].

6. Ark. Code Ann. § 8-4-217(b)(1)(C) and (E) provide:

(b)(1) It shall be unlawful for any person to engage in any of the following acts without having first obtained a written permit from the division:

...

(C) To construct, install, or operate any building, plant, works, establishment, or facility, or any extension or modification thereof, or addition thereto, the operation of which would result in discharge of any wastes into the waters of this state or would otherwise alter the physical, chemical, or biological properties of any waters of this state in any manner not already lawfully authorized.

(E) To discharge sewage, industrial waste, or other wastes into any of the waters of this state.

7. 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 rule or permit issued pursuant to the Act.
8. 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.”
9. On June 3, 2021, DEQ received an initial application for an NPDES individual permit.
10. On June 15, 2021, DEQ sent Respondent an Incompleteness letter because the initial application was missing the following information:
 - a. What measures are being/will be taken to protect the facility, as the facility is in the 100-year flood plain.
 - b. The location of the discharge marked on the topographic map.
 - c. A stormwater flow map, as required by EPA Form 21F.
 - d. A State Construction Permit, which is required for construction of the pond.
11. On August 9, 2021, Respondent submitted the missing permit application information to DEQ.
12. On August 19, 2021, DEQ sent Respondent a completeness letter.
13. On October 14, 2021, DEQ received a complaint alleging that water was being discharged from the site and running into the woods.
14. On October 22, 2021, DEQ performed a Reconnaissance inspection in response to the complaint. The inspection revealed the following violations:
 - a. The site is operating without a permit in violation of Ark. Code Ann. § 8-4-217(b)(1)(C) and APC&EC Rule 6.106(C) and therefore in violation of Ark. Code Ann. § 8-4-217(a)(3).

b. The site is discharging water from log sprinklers off of the property in violation of Ark. Code Ann § 8-4-217(b)(1)(E) and APC&EC Rule 6.106(E) and therefore in violation of Ark. Code Ann. § 8-4-217(a)(3).

15. On December 7, 2021, DEQ notified Respondent via letter of the violations identified during the October 22, 2021 inspection and that the inspection had been referred to the Office of Water Quality Enforcement Branch. DEQ requested a written response to the violations within thirty (30) calendar days of receipt of the inspection report.

16. To date, Respondent has not submitted a response to the October 22, 2022, inspection to DEQ.

17. On January 7, 2022, DEQ sent a copy of the pre-draft version of the permit to Respondent via email.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall immediately cease any unpermitted activity until proper permit coverage is obtained.

2. Respondent shall immediately implement and document Best Management Practices (BMPs) to contain all water on site until a permit is issued to Respondent authorizing the discharge of process and stormwater from the site.

3. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Two Thousand Four Hundred Dollars (\$2400.00) or one-half of the full civil penalty of One Thousand Two Hundred Dollars (\$1200.00) if this Order is signed and returned to the Office of Water Quality Enforcement Branch, DEQ, 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. 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-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 9th DAY OF JUNE, 2022.



JULIE LINCK, CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

Clanton Transport LLC

BY: 

(Signature)

Randy Clanton JR

(Typed or printed name)

TITLE: Owner

DATE: 5/20/22
