

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

IN THE MATTER OF:

AFIN: 88-01637

LIS No. 22-092

MOORE'S DOZER SERVICE, LLC
P.O. BOX 347
GLENWOOD, AR 71943

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) Rule 7, APC&EC Rule 8, APC&EC Rule 18, and APC&EC Rule 19.

The issues herein having been settled by agreement of Moore's Dozer Service, LLC (Respondent) and the Chief Administrator of the Division of Environmental Quality (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 dozer and excavation business located at Moore's Way Road (no 911 address) in Glenwood, Montgomery County, Arkansas (the Site).
2. 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;

3. 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.”

4. 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.”

5. Rule 18.602 provides:

No person shall cause or permit the open burning of refuse, garbage, trade waste, or other waste material, or shall conduct a salvage operation by open burning.

6. On June 28, 2021, DEQ received a complaint (PDS Complaint Number: 028184) that alleged wood debris from a nearby lumber sawmill were being brought to the Site and burned.

7. On June 29, 2021, DEQ personnel investigated the complaint allegation. The investigation revealed Resolute Glenwood LLC contracted with Respondent to transport residual materials from its lumber sawmill operations to Respondent’s site of operation. The residual material observed at the Site consisted of trade waste: processed lumber, sawdust, and bark. Some of the trade waste was placed and compacted to an unknown depth below the surface.

8. At the time of the investigation, DEQ personnel observed flames and heavy

smoke coming from a location on the southern area of the Site. Smoke was also observed coming up from below the surface in two areas of the northern portion of the Site.

9. During the investigation, Respondent stated that the site caught fire over the weekend and its origin was unknown. The area fire department participated in putting out the fire.

10. On June 29, 2021, the Montgomery County Office of Emergency Management informed DEQ that the fire needed to continue to burn a couple more days before the fire department attempted to extinguish the fire.

11. In correspondence dated July 2, 2021, Respondent was informed that the complaint investigation into the alleged open burning of trade waste was completed. DEQ personnel determined that Respondent had burned trade waste at the Site. Such act violates Rule 18.602 and therefore violates Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

12. On July 15, 2021, DEQ personnel conducted a follow-up investigation of the Site. A work crew using dozers and a water truck was observed exposing and isolating material to extinguish hot spots. Respondent stated they were working daily to extinguish the fire.

13. On July 27, 2021, DEQ personnel conducted a follow-up investigation of the Site. A work crew using dozers and a water truck was observed exposing and isolating material to extinguish hot spots.

14. On July 29, 2021, Respondent informed DEQ personnel by telephone that the fire at the Site had been extinguished.

15. On February 23, 2022, DEQ received a complaint (PDS Complaint Number:

029094) that alleged wood trade waste at the Site was actively burning and causing smoke in the surrounding area.

16. On February 24, 2022, DEQ personnel contacted Respondent regarding burning at the Site and smoke in the surrounding area. Respondent stated that they were aware of the burning at the Site and were sending heavy equipment to fight the fire. A site investigation by DEQ personnel was delayed until February 25, 2022, due to poor weather conditions.

17. On February 25, 2022, DEQ personnel investigated the complaint. Upon arrival, DEQ personnel observed several locations at the Site where smoke was rising from underground and the burning of trade waste was present. The cause of the fire was believed to be uncontrolled combustion of compacted wood trade waste underground.

18. At the time of the investigation, Respondent was using heavy equipment that included dozers, a track hoe, and a water truck to uncover and extinguish the fire. Respondent stated that no additional wood trade waste material had been brought to the Site since the complaint investigation in June 2021.

19. In correspondence dated February 28, 2022, Respondent was informed that the complaint investigation into the alleged open burning of trade waste was completed. DEQ personnel determined that Respondent had burned trade waste at the Site. Such act violates Rule 18.602 and therefore violates Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304. Respondent was required to immediately cease open burning and to extinguish the fire at the Site.

20. In correspondence received by DEQ on March 11, 2022, Respondent stated that they were at 90% complete in extinguishing the fire and resolving the smoke issue. Respondent

expected to have the matter fully completed within the week. Additionally, Respondent hired an outside environmental company and had been corresponding with the DEQ Office of Land Resources to rectify the situation.

21. On March 21, 2022, Respondent submitted a Title V general permit application to operate an air curtain incinerator at the Site.

22. On April 13, 2022, DEQ issued Respondent a General Air Permit for Title V Air Curtain Incinerators with the assigned tracking number 2370-AGP-021.

23. In correspondence dated April 21, 2022, DEQ informed Respondent that formal enforcement action was proceeding in this matter.

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. Respondent shall immediately cease the open burning of waste, and take such measures as are necessary to, in the future, ensure that such actions or conduct are not allowed to occur.

2. In compromise and full settlement of the violations specified in the FINDINGS OF FACT, Respondent agrees to pay a civil penalty of **EIGHT HUNDRED EIGHTY DOLLARS (\$880.00)**, or one-half of the penalty, **FOUR HUNDRED FORTY DOLLARS (\$440.00)** 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 **August 1, 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 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 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 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 Arkansas Pollution Control and Ecology Commission Rule 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/she is an Officer of Respondent being duly authorized to execute and bind Respondent to the terms contained herein.

SO ORDERED THIS 23 DAY OF August, 2022.


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

APPROVED AS TO FORM AND CONTENT:

MOORE'S DOZER SERVICE, LLC

BY: Chad Moore (Signature)

Chad Moore (Typed or printed name)

TITLE: Owner

DATE: 7/28/22