

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

IN THE MATTER OF:

**Terry Price, DBA TLP Enterprises
270 Moonshine Road
Searcy, Arkansas 72143**

**LIS No. 23- 007
AFIN 88-01488**

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (CAO) is issued pursuant to the authority of Ark. Code Ann. § 8-7-801 *et seq.*, and the rules promulgated thereunder, in particular, Arkansas Pollution Control and Ecology Commission (APC&EC) Rule No. 12 (Storage Tanks). All Code of Federal Regulations references contained herein are incorporated by reference in APC&EC Rule No. 12.104.

The issues herein having been settled by the agreement of Terry Price, individual (Respondent) and the Arkansas Department of Energy and Environment, 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. Ark. Code Ann. § 8-7-801(14)(A) defines “underground storage tank” (UST) as “any one (1) or combination of tanks, including underground pipes connected thereto, which is or has been used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground pipes connected thereto, is ten percent (10%) or more beneath the surface of the ground.”
2. Ark. Code Ann. § 8-7-801(8) defines “Regulated Substance” as “any substance defined in §101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601(14), but not including any substance regulated as a hazardous waste

under Subtitle C of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6921 *et seq.*; and petroleum.”

3. DEQ regulates USTs pursuant to Ark. Code Ann. § 8-7-801, *et seq.* and APC&EC Rule No. 12.

4. APC&EC Rule No. 12.502(B) defines “Contractor” as any person who contracts to install, repair, upgrade, or close a UST system for a third party.

5. APC&EC Rule No. 12.602(B) defines “Tester” as an individual or company who tests UST systems in Arkansas.

6. DEQ, as administered by its Chief Administrator, is the state agency charged with ensuring compliance with Ark. Code Ann. § 8-7-801 *et seq.* and APC&EC Rule No. 12 including the licensing of Contractors and Testers of USTs.

7. Respondent is licensed as both a Contractor and a Tester. Respondent holds Dual Role Contractor Install, Repair, Upgrade, and Closure (IRUC) License #000911 and Dual Role Contractor Testing License #001146. The licenses were issued on May 31, 2020, and authorize Respondent to perform repairs, installations, maintenance and testing on UST systems in the state of Arkansas.

8. On December 15, 2021, DEQ conducted a compliance inspection of a UST system at Miraj Flash Market in Vilonia, Faulkner County, Arkansas. During the inspection, DEQ noted three-eighths (3/8) of an inch of a weathered regulated substance (commonly referred to as “product”) in Monitoring Well #1. According to groundwater monitoring records provided to DEQ, on December 14, 2021, an employee of Respondent noted “NP” (no product) in Monitoring Well #1, yet the work order provided to the facility states “sheen” was present in Monitoring Well #1. The term “sheen” is associated with one-eighth (1/8) of an inch or less of

product. Three-eighths (3/8) of an inch of product is above the one-eighth (1/8) inch reporting limit for release detection as set forth by 40 C.F.R. § 280.43(f)(6) and APC&EC Rule 12.104. Respondent failed to notify the owner or DEQ of a suspected release and therefore violated APC&EC Rule 12.104 and Rule 12.613(B)(4).

9. On January 6, 2022, Respondent provided testing documentation to DEQ in response to a September 29, 2021, inspection of a UST system at Center Ridge Quick Stop in Center Ridge, Conway County, Arkansas. According to the testing documentation, Respondent performed spill bucket tests for thirty (30) minutes. Spill bucket tests are required to be performed for one (1) hour in accordance with the Petroleum Equipment Institute Recommended Practices 1200, the only code of practice developed by a nationally recognized association, as required by 40 C.F.R. § 280.35(a)(1)(ii)(B) and APC&EC Rule 12.104. Respondent failed to perform the spill bucket testing in accordance with 40 C.F.R. § 280.35(a)(1)(ii)(B) and therefore violated APC&EC Rule 12.104 and Rule 12.613(B)(2).

10. On June 21, 2022, DEQ conducted an inspection of a UST system at S & K Oil Co., Inc. in Bradford, White County, Arkansas. During the inspection, DEQ discovered that certain UST piping at the facility had been removed and replaced. The inspector noted that Respondent failed to provide a 7-day notice for installation and a 30-day notice for the closure of piping at the facility. During a post-inspection inquiry of the Respondent about the removal and replacement, the DEQ inspector was verbally informed by Respondent the work was completed in April 2022, which was more than 30 days past the completion of the removal and replacement. Respondent failed to provide DEQ with a 30 day notice of closure of piping. This violates 40 C.F.R. §280.71 and APC&EC Rule 12.104. Failing to provide the seven-day notice for installation or replacement violates APC&EC Rule 12.506(A).

11. On May 31, 2022, Respondent's Dual Role Contractor IRUC License No. 000911 and Dual Role Contractor Testing License No. 001146 expired.
12. On July 6, 2022, Respondent submitted a renewal application for Dual Role Contractor IRUC License No.000911 and Dual Role Contractor Testing License No.001146.
13. In a letter dated October 27, 2022, DEQ informed Respondent that a review of Respondent's non-compliance necessitated the denial of License Nos. 000911 and 001146.
14. On November 28, 2022, in accordance with APC&EC Rule 12 .513(C) and 611(C), Respondent requested a meeting with the Chief Administrator to appeal the denial of the licenses.
15. On December 9, 2022, Respondent appeared before the Chief Administrator and representatives of DEQ. At this meeting, Respondent agreed to the conditional renewal of his licenses, Nos. 000911 and 001146, in lieu of a final determination by the Chief Administrator regarding the denial of Respondent's license renewal.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall perform all installations, repairs, upgrades, closures, and testing in accordance with 40 C.F.R. § 280, APC&EC Rule No. 12, and all other applicable state and federal rules and regulations.
2. Respondent shall submit all records and notices to DEQ in a timely manner, maintain complete and accurate records as required by rule or statute, include dates on all such records, and where appropriate or required, include signatures on records.
3. Respondent shall employ appropriate testing materials and methods and shall perform all testing and sampling in accordance with APC&EC Rule 12 and all other applicable state and federal rules and regulations.

4. Upon the execution of this CAO by the Chief Administrator and Respondent, Respondent's licenses Dual Role IRUC License No. 000911 and Dual Role Contractor Testing License No. 001146 shall be deemed renewed and effective contingent upon Respondent's continuing compliance with all terms herein.

5. Upon the effective date of this CAO, and for a period of twenty-four (24) months thereafter, Respondent shall operate on a probationary basis under the terms of Dual Role IRUC License #000911 and Dual Role Contractor Testing License #001146. If Respondent fails to comply with any term of this CAO, any applicable licensure requirements, and any applicable state or federal rules and regulations during the probationary period, then upon written notice by DEQ of any violation of the conditions herein, Respondent shall voluntarily surrender Dual Role IRUC License #000911 and Dual Role Contractor Testing License #001146 to DEQ. Respondent acknowledges and agrees that any violation of the terms and conditions contained herein is dereliction of Respondent's duty as a licensed individual or company under APC&EC Rules 12.515(B)(3) and 12.613(B)(3). Respondent further acknowledges and agrees that Respondent's refusal to surrender the licenses upon violation of the terms herein is dereliction of Respondent's duty as a licensed individual or company under APC&EC Rules 12.515(B)(3) and 12.613(B)(3). If Respondent fails to voluntarily surrender the licenses upon violation of the terms herein and demand by DEQ, DEQ will proceed to permanently revoke Respondent's license.

6. In compromise and full settlement for instances of noncompliance specified in the Findings of Fact, Respondent agrees to pay the sum of Two Thousand Four Hundred Dollars (\$2,400.00). Payment of the penalty shall be paid in twenty-four (24) monthly installments of One Hundred Dollars (\$100.00). Respondent retains the right to pay in excess of One Hundred Dollars (\$100.00) per month and potentially reduce the total number of installments. The first

payment shall be due within thirty (30) days of the effective date of this CAO. All subsequent payments shall be due by the fifteenth (15th) of the month following the initial payment. Such payment of the penalty shall be made payable to DEQ and mailed to the attention of:

Division of Environmental Quality
Fiscal Division
5301 Northshore Drive
North Little Rock, AR 72118

In the event that Respondent fails to pay the civil penalties within the prescribed time, DEQ shall be entitled to attorneys' fees and costs associated with collection as well as all other lawful fees and penalties.

7. All requirements of this CAO are subject to approval by DEQ. In the event of any deficiencies, Respondent shall submit any additional information or changes requested, or take additional actions specified by DEQ to correct any such deficiencies within the timeframe specified by DEQ. Failure to respond adequately in writing within the timeframe specified by DEQ constitutes a failure to meet the requirements established by this CAO.

8. If Respondent fails to meet any requirement of this CAO within the deadline established by the CAO, DEQ may assess stipulated penalties for the delay in the following amounts:

- | | |
|---|--------------------|
| a. First day through the fourteenth day: | \$100.00 per day |
| b. Fifteenth day through the thirtieth day: | \$500.00 per day |
| c. Each day beyond the thirtieth day: | \$1,000.00 per day |

These stipulated penalties for delay in performance shall be in addition to any other remedies or sanctions which may be available to DEQ by reason of Respondent's failure to comply with this CAO.

9. Respondent shall notify DEQ in writing within five (5) calendar days of knowledge of any delay or potential delay in complying with any provision of this CAO, specifying in detail the anticipated length of delay, the precise cause of delay, and the measures being taken to correct and minimize the delay.

10. 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 the DEQ promptly, as provided in the preceding paragraph of this Section, shall be grounds for a denial of an extension.

11. Nothing contained in this CAO shall be construed as a waiver by DEQ of its authority over alleged violations not specifically addressed herein. This CAO does not purport in any way to relieve Respondent of its responsibilities for obtaining any necessary permits or licenses, nor does it relieve Respondent of any other obligations imposed by any local, state, or federal laws. This CAO does not exonerate any past, present, or future conduct not expressly addressed herein.

12. This CAO is subject to public review and comment in accordance with APC&EC Rule No. 8 and shall not be effective until thirty (30) calendar days after public notice is given. DEQ retains the right to rescind this CAO based upon the comments received within the thirty-day public comment period.

13. Notwithstanding the public notice requirements, the corrective actions necessary to achieve compliance shall be taken immediately. The publication of this CAO shall occur on or about the 10th or 25th day of the month following the date this CAO is executed. As provided by APC&EC Rule No. 8, this matter is subject to being reopened upon APC&EC initiative or in the event a petition to set aside this CAO is granted by the APC&EC.

14. Each of the undersigned representatives of the parties certifies that he or she is authorized to execute this CAO and to legally bind that party to its terms and conditions.

SO ORDERED THIS 19 DAY OF January 2023
~~2022.~~

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

APPROVED AS TO FORM AND CONTENT:
TERRY PRICE, INDIVIDUAL

BY:

Signature Terry Price

Print Name Terry Price

Title Owner

Date 1-18-2023