

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

IN THE MATTER OF:

AFIN: 60-06206

LIS No. 23-064

MALY CONSTRUCTIONS, LLC  
650 UNITED DRIVE, SUITE 220  
CONWAY, AR 72032

**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.*, the Removal of Asbestos Material Act, Ark. Code Ann. § 20-27-1001 *et seq.*, Arkansas Pollution Control and Ecology Commission (APC&EC) Rule 7, APC&EC Rule 8, and APC&EC Rule 21.

The issues herein having been settled by agreement of Maly Constructions, 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. On or before January 13, 2023, Respondent demolished or caused to be demolished a structure formerly located at 6820 Crystal Hill Road, North Little Rock, Pulaski County, Arkansas 72118 (the Site).

2. Ark. Code Ann. § 20-27-1007(2) and (4) provides:

It shall be unlawful for any person:

...

(2) To participate in any response action, demolition, or renovation contrary to the rules or orders issued under this subchapter or contrary to the Arkansas Water and Air Pollution Control Act, § 8-4-101 *et seq.*, and the Arkansas Solid Waste Management Act, § 8-6-201 *et seq.*, and the rules promulgated thereunder, whether or not such person is required to have a license or certificate pursuant to this subchapter;

...

(4) To violate any provision of this subchapter or any rule or order adopted or issued under this subchapter.

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. § 20-27-1002(a), “Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment.”

5. The structure(s) in question constitutes a “facility” as defined in APC&EC Rule 21, Chapter 4.

6. Respondent meets the definition of an “owner or operator of a demolition or renovation activity” as defined in APC&EC Rule 21, Chapter 4.

7. On January 13, 2023, DEQ personnel performed a complaint investigation at the site.

8. Rule 21.501 states that the owner or operator of a demolition, renovation, or response action shall conduct, or have conducted, a thorough inspection of the affected facility or part of the facility for the presence of asbestos including category I and category II nonfriable

asbestos prior to the commencement of the demolition, renovation, or response action.

9. During the complaint investigation, it was revealed that Respondent failed to conduct or have conducted a thorough asbestos inspection of the affected facility prior to demolition. Such a failure violates APC&EC Rule 21.501, and therefore violates Ark. Code Ann. § 20-27-1007(4).

10. Rule 21.601 states that for any demolition of a facility or facility component (even if no asbestos is present), the owner or operator shall submit a written NOI to the Division by either hand delivery, postmarked by U.S. Postal Service, or postmarked by a commercial delivery service at least ten (10) working days before any demolition activity begins. Such notice must be accompanied by the required fee which is described in Chapter 22 of this rule.

11. During the complaint investigation, it was revealed that Respondent failed to submit a written NOI and appropriate NOI fee to DEQ at least ten (10) working days prior to commencing the demolition activity. As noted in paragraph 9 of the FINDINGS OF FACT, no asbestos inspection was conducted prior to the demolition activity; therefore, the appropriate fee amount could not be determined at this time. Such a failure violates APC&EC Rule 21.601, and therefore violates Ark. Code Ann. § 20-27-1007(4).

12. Rule 18.602 states that 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.

13. During the complaint investigation, it was revealed that Respondent performed open burning of garbage and trade waste material. Such a failure violates APC&EC Rule 18.602, and therefore violates Ark. Code Ann. § 20-27-1007(4).

14. In correspondence dated January 20, 2023, DEQ provided Respondent with the

opportunity to review the violations and submit any additional information that Respondent deemed appropriate regarding the compliance issues.

15. In correspondence dated April 21, 2023, DEQ informed Respondent that formal enforcement would be proceeding regarding 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 insure that such actions or conduct are not allowed to occur.

2. In compromise and full settlement for instances of noncompliance specified in the FINDINGS OF FACT, Respondent agrees to pay the sum of **FOUR THOUSAND NINE HUNDRED TWENTY DOLLARS (\$4,920.00)**. Payment is due within thirty (30) calendar days after 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-day public comment period.

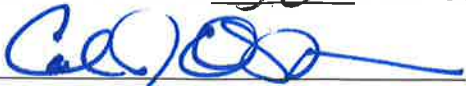
8. As provided by APC&EC Rule 8, this matter is subject to being reopened upon Commission initiative or in the event a petition to set aside this CAO is granted by the Commission.

9. Nothing contained in this CAO shall relieve Respondent of any obligations imposed by any other applicable local, state, or federal laws.

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 does it relieve 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 a Managing Member of Respondent, being duly authorized to execute and bind Respondent to the terms contained herein. Execution of this CAO by an individual other than a Managing Member 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 11<sup>th</sup> ~~30~~ DAY OF SEPTEMBER ~~August~~, 2023.

  
CALEB J. OSBORNE  
DIVISION OF ENVIRONMENTAL QUALITY, DIRECTOR  
CHIEF ADMINISTRATOR, ENVIRONMENT  
ARKANSAS DEPARTMENT OF ENERGY & ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

MALY CONSTRUCTIONS, LLC

BY:  (Signature)

Ronnie Robertson (Typed or printed name)

TITLE: Managing Director

DATE: 30 August 2023

Maly Constructions, LLC

By:  (Signature)

Smitha Thomas (Typed or printed name)

Title Director/Managing Member

Date 30 August 2023