

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT,
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

AFIN: 88-01631

LIS No. 24-001

CITY OF BEEBE
321 NORTH ELM STREET
BEEBE, ARKANSAS 72012

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, APC&EC Rule 19, and APC&EC Rule 26.

The issues herein having been settled by agreement of City of Beebe (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 an air curtain incinerator located at the end of Loyd Henderson Road in Beebe, White County, Arkansas.
2. The Air Permit referenced in this CAO is the General Air Permit for Title V Air Curtain Incinerators 2370-AGP-000 (the Permit). Respondent is assigned Tracking No. 2370-AGP-

019, which indicates authority to operate under the Permit. Respondent's authority to operate under the Permit was granted on October 18, 2021.

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 DEQ;

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. Respondent is subject to the provisions of 40 C.F.R. Part 60, Subpart EEEE - Standards of Performance for Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006 (Subpart EEEE).

7. On February 15, 2023, DEQ personnel conducted a full compliance inspection of Respondent's facility. The inspection covered the reporting period of December 14, 2021 through February 14, 2023.

8. Specific Condition 33 of the Permit states that Respondent must conduct an initial test for opacity as specified in §60.8. After the initial test for opacity, Respondent must conduct annual tests no more than twelve (12) months following the date of the previous test. If the air curtain

incinerator has been out of operation for more than twelve (12) months following the date of the previous test, Respondent must conduct a test for opacity upon startup of the unit. Respondent must use Method 9 of Appendix A of Part 60 to determine compliance with the opacity limitation.

9. Plantwide Condition 3 of the Permit states that Respondent must test any equipment scheduled for testing, unless otherwise stated in the Specific Conditions of this permit or by any federally regulated requirements, within the following time frames: (1) new equipment or newly modified equipment within sixty (60) days of achieving the maximum production rate, but no later than 180 days after initial startup of the permitted source or (2) operating equipment according to the time frames set forth by DEQ or within 180 days of permit issuance if no date is specified. Respondent must notify DEQ of the scheduled date of compliance testing at least fifteen (15) business days in advance of such test. Respondent shall submit the compliance test results to DEQ within sixty (60) calendar days after completing the testing.

10. During the inspection, it was discovered that Respondent failed to conduct the opacity testing within 180 days of the air curtain incinerator startup. The initial startup date for the air curtain incinerator was May 4, 2022. The initial testing was to be conducted by October 31, 2022. Respondent failed to conduct the testing before October 31, 2022. Such a failure violates Specific Condition 33 and Plantwide Condition 3 of the Permit and therefore violates Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304. Such a failure also violates Subpart EEEE.

11. General Provision 7 of the Permit states that Respondent must submit reports of all required monitoring every six (6) months. If the permit establishes no other reporting period, the reporting period shall end on the last day of the month six months after the issuance of the initial Title V permit and every six months thereafter. The report is due on the first day of the second month

after the end of the reporting period. The first report due after issuance of the initial Title V permit shall contain six months of data and each report thereafter shall contain twelve (12) months of data. The report shall contain data for all monitoring requirements in effect during the reporting period. If a monitoring requirement is not in effect for the entire reporting period, only those months of data in which the monitoring requirement was in effect are required to be reported. The report must clearly identify all instances of deviations from permit requirements. A responsible official as defined in Reg.26.2 must certify all required reports.

12. General Provision 21 of the Permit states that Respondent shall submit a compliance certification with the terms and conditions contained in the permit, including emission limitations, standards, or work practices. Respondent must submit the compliance certification annually. If the permit establishes no other reporting period, the reporting period shall end on the last day of the anniversary month of the initial Title V permit. The report is due on the first day of the second month after the end of the reporting period. Respondent must also submit the compliance certification to the Administrator as well as to DEQ.

13. During the inspection, it was discovered that Respondent failed to submit two (2) Semi-Annual Monitoring (SAM) Reports and an Annual Compliance Certification (ACC) Report to DEQ by the due dates. The two (2) SAM Reports were due by June 1, 2022 and December 1, 2022. DEQ received the two (2) SAM reports on February 24, 2023. The ACC Report was due on December 1, 2022. DEQ received the ACC Report on March 2, 2023. Such failures violate General Provisions 7 and 21 of the Permit and therefore violate Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

14. On March 1, 2023, Respondent submitted to DEQ a Stack Test Protocol Form for

opacity testing to be conducted on the air curtain incinerator on March 16, 2023.

15. In a letter dated March 2, 2023, DEQ informed Respondent of the compliance issues identified during the inspection conducted on February 2, 2023. This letter was intended to give Respondent an opportunity to review the issues identified and submit any additional information Respondent deemed appropriate.

16. On March 16, 2023, Respondent conducted the opacity testing for the air curtain incinerator.

17. On April 17, 2023, DEQ sent Respondent a formal enforcement letter for the compliance issues discovered during the February 15, 2023 inspection.

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. This CAO addresses all violations contained in the FINDINGS OF FACT.
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 FIVE HUNDRED DOLLARS (\$2,500.00)**. 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 (30) 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. 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. This Order has been reviewed and approved by the City Council of the City of Beebe in a duly convened meeting with a quorum present. It is the intention of the City Council to be bound by the terms appearing in the Order.

12. The City Council of the City of Beebe has authorized the Mayor and the City Clerk/Treasurer to sign this Order on behalf of the City.

13. The City Council of the City of Beebe has authorized the Mayor and City Clerk/Treasurer to expend funds for compliance activities required by this Order including, but not limited to, the payment of a civil penalty in the amount listed above.

SO ORDERED THIS 21 DAY OF January, 2023 ^{24 CTD}

Caleb J. Osborne

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

APPROVED AS TO FORM AND CONTENT:

CITY OF BEEBE

BY: *Mike Robertson* (Signature)

Mike Robertson (Typed or printed name)

TITLE: Mayor

DATE: 12-11-2023 MR

BY: *Carol West* (Signature)

Carol West (Typed or printed name)

TITLE: Act / Treasurer

DATE: 12-11-2023