

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT, DIVISION OF
ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Darren Libby, Individual
21647 Rocky Ridge Lane
Rogers, AR 72756

LIS No. 24- 119
AFIN 04-00474
Facility ID No. 04000166

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 Darren Libby, (Respondent), and the 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. DEQ regulates underground storage tanks pursuant to Ark. Code Ann. § 8-7-801, *et seq.* and APC&EC Rule No. 12.
2. 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.
3. Ark. Code Ann. § 8-7-801(4) defines "Operator" as "any person in control of or having responsibility for the daily operation of an underground storage tank."
4. Ark. Code Ann. § 8-7-801(5)(A)(i) defines "Owner" as, "in the case of an underground storage tank in use on November 8, 1984, or brought into use after November 8, 1984, any person

who owns an underground storage tank used for the storage, use, or dispensing of regulated substances.”

5. 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.”

6. Ark. Code Ann. § 8-7-801(12) defines “Storage tank” as “an aboveground storage tank or underground storage tank as defined in this subchapter.”

7. Pursuant to APC&EC Rule No. 12.704(D), If DEQ determines an underground storage tank facility has been identified as ineligible for fuel delivery under this Rule, both the designated Class A operator and the designated Class B operator for that facility must complete Division-provided retraining and be recertified within forty-five (45) days of the facility being identified as ineligible for fuel delivery.

8. Respondent owns the underground storage tanks located at 17773 E. Highway 12, Rogers, Benton County, Arkansas (Facility). The Facility consists of three tanks designated by DEQ as Tank Nos. 3, 4, and 5. Tank No. 3 was installed on January 1, 1996. Tank Nos. 4 and 5 were installed on January 1, 1999. Tank Nos. 1 and 2 were previously removed.

9. On December 28, 2022, DEQ conducted an inspection of the Facility. During the inspection, Respondent was determined to be out of compliance due to the following violations:

- a. Respondent failed to conduct tank gauging and vapor monitoring every thirty (30) days for Tank Nos. 3, 4, and 5. Failure to conduct manual tank gauging and vapor monitoring violates 40 CFR § 280.41(a)(1).

- b. Respondent failed to conduct 3-year line tightness testing for the pipes connected to Tank Nos. 3, 4, and 5. Failure to conduct 3-year line tightness testing violates 40 CFR § 280.41(b)(1)(ii).
- c. Respondent failed to provide documentation of annual release detection equipment testing. Failure to provide documentation of annual release detection equipment testing violates 40 CFR § 280.45(b)(1).
- d. Respondent failed to conduct 3-year spill bucket testing for Tank Nos. 3, 4, and 5. Failure to conduct 3-year spill bucket testing violates 40 CFR § 280.35(a)(1)(ii).
- e. Respondent failed to conduct 3-year overfill device testing for Tank Nos. 3, 4, and 5. Failure to conduct 3-year overfill device testing violates 40 CFR § 280.35(a)(2).
- f. Respondent failed to conduct a 3-year cathodic protection system testing for Tank Nos. 3, 4, and 5. Failure to conduct 3-year cathodic protection system testing violates 40 CFR § 280.31(b)(1).
- g. Respondent failed to conduct monthly walk-through inspections, remove excess liquid/debris from spill buckets, and maintain accessibility of vapor/groundwater monitoring well. Failure to conduct monthly walkthrough inspections violates 40 CFR § 280.36(a)(1).

10. On December 29, 2022, DEQ e-mailed the inspection report to Respondent. The report requested Respondent provide DEQ with evidence of compliance no later than January 27, 2023. Respondent failed to respond to the inspection report.

11. On January 30, 2023, DEQ conducted a follow-up inspection of the Facility. In addition to the previously cited violations, Respondent failed to provide DEQ with documentation pertaining

to excavation zone assessment prior to monitoring well installation and tanks and piping materials of construction. Failure to provide such documentation violates 40 CFR § 280.34.

12. On January 30, 2023, DEQ e-mailed the follow-up inspection report to Respondent. The report requested Respondent provide DEQ with evidence of compliance no later than February 15, 2023. Respondent failed to respond to the inspection report.

13. On March 6, 2023, DEQ conducted a follow-up inspection of the Facility. Pursuant to APC&EC Rule No. 12.110(F)(1)(b), DEQ red-tagged Tank Nos. 3, 4, and 5, prohibiting fuel delivery.

14. On March 7, 2023, DEQ e-mailed the inspection report to Respondent.

15. On March 13, 2023, Respondents informed DEQ via phone that a fire the previous evening had destroyed the facility records.

16. On March 23, 2023, DEQ conducted a follow-up inspection of the Facility.

17. On March 24, 2023, DEQ e-mailed the follow-up inspection report to Respondent.

18. On March 31, 2023, DEQ conducted a follow-up inspection of the Facility.

19. On March 31, 2023, DEQ mailed hard copies of the December 28, 2022, inspection report and all follow-up inspection reports to Respondent.

20. On March 13, 2024, a proposed CAO was mailed to Respondent. Respondent failed to sign or return the proposed CAO.

21. On April 1, 2024, DEQ conducted a follow-up inspection of the Facility. All tanks at the Facility were emptied and put into 'Temporary Closure' status. All red tags were removed.

22. On April 5, 2024, DEQ e-mailed the inspection report to Respondent.

23. On April 30, 2024, Respondent e-mailed to DEQ a request for a reduction in the penalty amount in the proposed CAO.

24. On May 31, 2024, DEQ approved Respondent's penalty reduction request and payment plan.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondents shall henceforth comply with 40 CFR § 280, APC&EC Rule No. 12, and all other applicable state and federal rules and regulations.
2. Respondents shall verify every four (4) months that all underground storage tanks are empty and have no more than one (1) inch of liquid at all times.
3. Within thirty (30) calendar days of the effective date of this CAO, Respondents shall submit documentation of 3-year test of the cathodic corrosion protection system for Tank Nos. 3, 4, and 5.
4. All documents required by this CAO to be submitted to DEQ, excluding the penalty payment required by Paragraph 5 below, shall be emailed to Enforcement, Office of Land Resources, at olrenforcement@arkansas.gov, or submitted by Certified Mail or hand-delivered to Enforcement, Office of Land Resources, DEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317.
5. In compromise and full settlement of the civil penalties specified in the Findings of Fact, Respondent agrees to pay the total sum of One Thousand Five Hundred Dollars (\$1,500.00) in six (6) monthly payments of Two Hundred Fifty Dollars (\$250.00). The first payment is due within thirty (30) calendar days of the effective date of this Order. 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.

6. 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.

7. 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.

8. 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.

9. 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 preceding paragraph of this Section, shall be grounds for a denial of an extension.

10. 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.

11. 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.

12. 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.

13. 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.

BMT

So Ordered This 18
19 Day of July
June, 2024.

Bailey Taylor

Bailey Taylor, Division of Environmental Quality, Interim Director
Interim Chief Administrator, Environment
Arkansas Department of Energy and Environment

Approved as to Form and Content:

Darren Libby, Individual

BY:

Signature Scott Libby

Print Name Scott Libby

Title President

Date 6-18-2024