

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

IN THE MATTER OF:

AFIN: 88-01599

LIS No. 25-055

ARKANSAS DEPARTMENT OF TRANSPORTATION
2510 WEST KINGS HIGHWAY
PARAGOULD, AR 72450

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, now codified at 8 CAR § 10-101 *et seq.*, APC&EC Rule 8 (8 CAR § 11-101 *et seq.*), APC&EC Rule 18 (8 CAR § 40-101 *et seq.*), APC&EC Rule 19 (8 CAR § 41-101 *et seq.*), and APC&EC Rule 26 (8 CAR § 42-101 *et seq.*).

The issues herein having been settled by agreement of Arkansas Department of Transportation (Respondent) and the Director 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 2510 West Kings Highway in Paragould, Greene 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-014, which indicates authority to operate under the Permit. The Respondent's authority to operate under the Permit was granted on July 12, 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 CCCC - Standards of Performance for Commercial and Industrial Solid Waste Incineration Units (Subpart CCCC).

7. Specific Condition 26 of the Permit states Respondent must conduct an initial test for opacity as specified in 40 C.F.R. § 60.8. After the initial test for opacity, Respondent must conduct annual tests no more than twelve (12) calendar months following the date of the previous test.

8. On June 23, 2022, Respondent requested an extension to conduct annual visible emissions (VE) testing stating that the air curtain incinerator (the Incinerator) had not been used since the initial VE test. The initial VE test was conducted on June 23, 2021.

9. On June 23, 2022, DEQ personnel granted Respondent the extension to conduct the next annual VE testing at the Incinerator. Testing was to be conducted upon the next start-up and operation of the Incinerator.

10. In October 2022, Respondent started up and began operation of the Incinerator.

11. On March 8, 2023, DEQ personnel conducted an inspection of Respondent's facility. The review period of the inspection was July 2022 through February 2023.

12. On April 10, 2023, during a review of the Annual Compliance Certification (ACC) Report, DEQ personnel found that Respondent failed to conduct the required annual VE test upon the next start-up and operation of the Incinerator in accordance with the extension request approval. Such a failure violates Specific Condition 26 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 40 C.F.R. § 60.2255.

13. On April 6, 2023, Respondent conducted VE testing at the Incinerator.

14. In a letter dated April 11, 2023, DEQ informed Respondent of the compliance issue identified during the inspection. This letter was intended to provide Respondent with the opportunity to review the violation and submit any additional information Respondent deemed appropriate.

15. In correspondence dated April 18, 2023, DEQ informed Respondent that formal enforcement action was proceeding regarding this matter.

16. On April 24, 2023, DEQ received the VE test results for testing conducted at the Incinerator on April 6, 2023.

17. On May 5, 2023, DEQ completed its evaluation of the report and found that Respondent passed the VE test for both start-up and normal operations.

18. On October 17, 2023, DEQ mailed a proposed CAO to Respondent.
19. On November 8, 2023, Respondent provided a written response to the proposed CAO. In this response, Respondent stated they would be dismantling the source to sell at auction and would be voiding the permit as the source was not in regular use. Additionally, Respondent requested that the civil penalty be retracted due to compliance in previous use, documentation, and testing.
20. On November 20, 2023, Respondent submitted a request to DEQ that the permit be voided. On December 12, 2023, DEQ voided the permit.
21. On August 6, 2024, DEQ mailed another proposed CAO to Respondent.
22. On April 3, 2025, Respondent submitted a response to the CAO stating the incinerator was decommissioned and the permit was voided on December 12, 2023. On May 5, 2025, DEQ personnel verified that the incinerator was no longer present at the facility.

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 referenced in the FINDINGS OF FACT.
2. 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.

3. 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.

4. 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.

5. 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.

6. This CAO is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d). However, this CAO shall become effective upon execution by Respondent and the Director of DEQ.

7. As provided by APC&EC Rule 8, now codified at 8 CAR § 11-101, *et seq.*, 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.

8. 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.

9. 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.

10. By virtue of the signature appearing below, the individual represents that he or she is the Director of Respondent, being duly authorized to execute and bind Respondent to the terms

contained herein. Execution of this CAO by an individual other than the Director of Respondent shall be accompanied by a resolution granting signature authority to that individual as duly ratified by the Director of the entity.

SO ORDERED THIS 10 DAY OF July, 2025.

Bailey Taylor
BAILEY TAYLOR
CHIEF ADMINISTRATOR OF ENVIRONMENT AND DEQ DIRECTOR
ARKANSAS DEPARTMENT OF ENERGY & ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

ARKANSAS DEPARTMENT OF TRANSPORTATION

BY: [Signature] (Signature)
Jared D. Wiley (Typed or printed name)
Michelle Dumas, Chief Legal Counsel

TITLE: Director

DATE: June 24, 2025