

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Clean Harbors El Dorado, LLC
309 American Circle
El Dorado, AR 71730

LIS No. 16- 106
Permit No. AR0037800
AFIN 70-00098

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (Order) is issued pursuant to the authority of the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-101 *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C. § 1311 *et seq.*, and the regulations issued thereunder by Arkansas Pollution Control and Ecology Commission (APC&EC).

The issues herein having been settled by the agreement of Clean Harbors El Dorado, LLC (Respondent) and the Arkansas Department of Environmental Quality (ADEQ or Department), it is hereby agreed and stipulated that the following FINDINGS OF FACT and ORDER AND AGREEMENT be entered.

FINDINGS OF FACT

1. Respondent operates a hazardous waste disposal facility (facility) located at 309 American Circle, El Dorado, in Union County, Arkansas.
2. Respondent is regulated pursuant to the National Pollutant Discharge Elimination System (NPDES).
3. Respondent discharges treated wastewater and contaminated stormwater to Boggy Creek, thence to Bayou de Loutre in Segment 2D of the Ouachita River Basin.

4. Pursuant to the federal Clean Water Act, 33 U.S.C. § 1311(a) *et seq.*, the NPDES program prohibits the discharge of pollutants except as in compliance with a permit issued under the NPDES program in accordance with 33 U.S.C. § 1342(a).

5. ADEQ is authorized under the Arkansas Water and Air Pollution Control Act (the Act) to issue NPDES permits in the state of Arkansas and to initiate an enforcement action for any violation of an NPDES permit.

6. 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, regulation, or order adopted by the [APC&EC] under this chapter or of a permit issued under this chapter by the [ADEQ].

7. Ark. Code Ann. § 8-4-103(c)(1)(A) authorizes ADEQ to assess an administrative civil penalty not to exceed ten thousand dollars (\$10,000) per violation for any violation of any provision of the Act and any regulation or permit issued pursuant to the Act.

8. Pursuant to Ark. Code Ann. § 8-4-103(c)(1)(B), "Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment."

9. NPDES Permit Number AR0037800 (Permit) was issued to the Respondent on September 30, 2010. The Permit became effective on October 1, 2010, was modified effective June 10, 2011, and expired on September 30, 2015.

10. On April 3, 2015, Respondent submitted a complete Permit renewal application. The Permit application was deemed complete on April 6, 2015, and therefore Respondent's coverage under the Permit was administratively continued pursuant to APC&EC Reg. 6.201.

11. The Permit was renewed on August 17, 2016, with an effective date of October 1, 2016.
12. Respondent has been required by the Permit to monitor for 1,2-Dichloroethane since October 1, 2004. Pursuant to APC&EC Reg. 6.201, the Permit was continued until the renewal permit became effective on October 1, 2016. That renewal permit also requires 1,2-Dichloroethane to be monitored.
13. Respondent is required by Part I, Section A of the Permit to conduct analyses for 1,2-Dichloroethane monthly in Internal Outfall 009 and to report the monthly average and daily maximum concentration on a monthly basis.
14. Respondent is required by Part I, Section A of the Permit to conduct analyses for 1,2-Dichloroethane quarterly in External Outfall 009 and to report the monthly average and daily maximum concentration on a quarterly basis.
15. On November 5, 2014, Respondent notified ADEQ that it had been discovered during an internal audit that in the past five (5) years 1,2-Dichloroethene was monitored instead of 1,2-Dichloroethane.
16. Beginning with the monitoring period ending January 1, 2008, through the monitoring period ending December 31, 2014, Respondent failed to conduct analyses for 1,2-Dichloroethane, which is a pollutant included in the permitted effluent discharge limits detailed in Part I Section A of the Permit.
17. During this period, Respondent was required to report a total of one hundred sixty (160) Discharge Monitoring Report (DMR) values for 1,2-Dichloroethane as follows:

- a. Over the course of five (5) years, there were sixty (60) monthly monitoring periods for Internal Outfall 009. Respondent was required to report one (1) monthly average value and one (1) daily maximum value for 1,2-Dichloroethane for each of these monthly monitoring periods, totaling one hundred twenty (120) values during the five (5) year period.
- b. Over the course of five (5) years, there were twenty (20) quarterly monitoring periods for External Outfall 009. Respondent was required to report one (1) monthly average value and one (1) daily maximum value for 1,2-Dichloroethane for each of these quarterly monitoring periods, totaling forty (40) values during the five (5) year period.

18. Each of the one hundred sixty (160) monitoring violations constitutes a separate permit violation and therefore one hundred sixty (160) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

19. On March 19, 2015, Respondent met with the Department to discuss the monitoring violations referenced above.

20. On August 31, 2015, ADEQ requested that corrected DMRs be submitted to reflect the above mentioned monitoring violations. The DMRs previously submitted to ADEQ for the above mentioned monitoring periods incorrectly stated that analyses had been properly conducted for 1,2-Dichloroethane.

21. On September 16, 2015, Respondent submitted corrected DMRs to reflect the above mentioned monitoring violations.

22. The Department conducted a review of the certified Discharge Monitoring Reports submitted by Respondent for the Facility in accordance with the Permit.

23. The review revealed the following violations of the permitted effluent discharge limits detailed in Part I Section A of the Permit from April 1, 2013 through August 31, 2016:

- a. Two (2) violations for Discharge Flow as Percent of Upstream Flow;
- b. Five (5) violations for Total Recoverable Mercury;
- c. Five (5) violations for Total Recoverable Lead, and
- d. Six (6) violations for 1,2-Dichloroethane.

24. Each of the eighteen (18) discharge limitation violations listed in paragraph 23 above constitutes a separate permit violation for a total of eighteen (18) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

25. On May 18, 2015, the Department requested the Respondent submit a Corrective Action Plan (CAP) to address effluent violations.

26. On June 17, 2015, and on July 2, 2015 the Respondent submitted a proposed CAP and a revised CAP, respectively. These CAPs proposed that the effluent violations were caused by contaminated groundwater seeps. These CAPs proposed the relocation of outfall 009 as a corrective action. Upon review, the Department did not approve either CAP, as the corrective actions did not adequately address how the contaminated groundwater seeps at the facility would be addressed following the proposed outfall relocation.

27. On September 18, 2015, Respondent met with the Department to discuss the proposed corrective actions in the previously submitted CAPs.

28. On October 14, 2015, Respondent submitted a Scoping Plan related to the September 18, 2015 meeting, to address effluent violations.

29. On January 7, 2016, ADEQ sent a letter to Respondent stating no objection to the contents of the Scoping Plan.

30. On July 7, 2016, Respondent submitted a CAP addressing the lead and 1,2-Dichloroethane effluent violations and their plans to eliminate contaminated groundwater seeps at the site.

31. On September 8, 2016, ADEQ sent a letter to Respondent requesting a revised CAP.

32. On October 12, 2016, Respondent met with ADEQ to discuss and clarify the contents of the July 7 CAP and to determine what specific changes needed to be included in the revised CAP.

33. On October 17, 2016, ADEQ sent a letter to Respondent requesting a revised CAP be submitted to ADEQ by no later than November 17, 2016. In the letter, ADEQ requested that the revised CAP include corrective actions for mercury effluent violations as well as more detailed information about the plans to eliminate contaminated groundwater seeps.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. On or before the effective date of this order or by January 2, 2017 (whichever is later), Respondent shall submit to ADEQ the revised CAP referenced in the Findings of Fact Paragraph 33 above. The revised CAP shall include the information requested by ADEQ in the letter sent on October 17, 2016. The revised CAP shall be certified by a Professional Engineer (P.E.) licensed in the State of Arkansas.

2. The revised CAP shall, at minimum, include a reasonable milestone schedule with a date of final compliance no later than 1 year after the ADEQ Approval of the CAP, and the revised CAP shall detail the methods and best available technologies economically achievable that will be used to correct the violations listed in Findings of Fact paragraph 23 above and prevent future violations. Upon review and approval by ADEQ, Respondent shall comply with the terms and milestone schedule contained in the revised CAP, and the approved revised CAP, milestone schedule and final compliance date to be no later than 1 year after the ADEQ Approval of the CAP shall be fully enforceable as terms of this Order.

3. On or before the fifteenth day of the month following the effective date of this Order, and each quarter thereafter for a period lasting until the completion date set forth in Item #2 of the Order and Agreement, the Respondent shall submit quarterly progress reports detailing the progress that has been made towards compliance with final permitted effluent limits.

4. Respondent shall submit the final compliance report 30 days after the completion date of the CAP.

5. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Thirty-Three Thousand Dollars (\$33,000.00). 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 the Arkansas Department of Environmental Quality, and mailed to the attention of:

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

In the event that Respondent fails to pay the civil penalty within the prescribed time, ADEQ shall be entitled to attorneys' fees and costs of collection.

6. Failure to meet any requirement or deadline of this Order constitutes a violation of said Order. If Respondent should fail to meet any such requirements or deadlines, the Respondent consents and agrees to pay on demand to ADEQ stipulated penalties according to the following schedule:

- a. First day through fourteenth day: \$100.00 per day
- b. Fifteenth day through the thirtieth day: \$500.00 per day
- c. Each day beyond the thirtieth day: \$1000.00 per day

These stipulated penalties for delay in performance shall be in addition to any other remedies or sanctions which may be available to ADEQ by reason of failure by Respondent to comply with the requirements of this Order.

7. If any event, including but not limited to an act of nature, occurs which causes or may cause a delay in the achievement of compliance by Respondent with the requirements or deadlines of this Order, Respondent shall so notify ADEQ, in writing, as soon as reasonably possible after it is apparent that a delay will result, but in no case after the due dates specified in this Order. 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.

8. ADEQ may grant an extension of any provision of this Order, 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 ADEQ promptly, as provided in the preceding paragraph of this Section, shall be grounds for a denial of an extension.

9. All requirements by the Order and Agreement are subject to approval by ADEQ. Unless otherwise specified herein, in the event of any deficiencies, Respondent shall, within the timeframe specified by ADEQ, submit any additional information or changes requested, or take additional actions specified by ADEQ to correct any such deficiencies. Failure to adequately respond to such Notice of Deficiency within the timeframe specified in writing by ADEQ constitutes a failure to meet the requirements established by this Order.

10. This Order is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d) and APC&EC Regulation No. 8 and shall not be effective until thirty (30) calendar days after public notice is given. ADEQ retains the right to rescind this Order based upon the comments received within the thirty-day public comment period. Notwithstanding the public notice requirements, the corrective actions necessary to achieve compliance shall be taken immediately. The publication of this Order shall occur on or about the 10th or 25th day of the month following the date this Order is executed. As provided by APC&EC Regulation No. 8, this matter is subject to being

reopened upon Commission initiative or in the event a petition to set aside this Order is granted by the Commission.

11. Nothing in this Order shall be construed as a waiver by ADEQ of its enforcement authority over alleged violations not specifically addressed herein. Also, this Order does not exonerate Respondent from any past, present, or future conduct which is not expressly addressed herein, nor does it relieve Respondent of its responsibilities for obtaining any necessary permits.

12. In the interest of resolving this matter without the delay and expense of litigation, Respondent agrees to the entry of this Order, but neither admits nor denies Findings of Fact or conclusions of Law, and therefore agrees that this Order shall be deemed an admission of fact only as necessary for the enforcement of this Order by ADEQ.

13. 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 as attested by the secretary of said entity. Execution of this CAO by an individual other than a Managing Member of Respondent shall be accompanied by a resolution granting signature authority to said individual as duly ratified by the governing body of the entity.

SO ORDERED THIS 02nd DAY OF December, 2016.

Becky W. Keogh
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

CLEAN HARBORS EL DORADO, LLC

BY: Ron Hines
(Signature)

Ron Hines
(Typed or printed name)

TITLE: SVP Int'l Operations

DATE: 12-6-16