

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

IN THE MATTER OF:

**MACK ARMSTRONG
466 LINDSEY LANE
TEXARKANA, ARKANSAS 71854**

**AFIN 46-00690
LIS 20- 172**

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (CAO) is issued pursuant to the authority of the Arkansas Solid Waste Management Act, Ark. Code Ann. § 8-6-201 *et seq.*, the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-101, *et seq.*, and Arkansas Pollution Control and Ecology Commission (APC&EC or “Commission”) Regulation 22. The issues herein having been settled by the agreement of Mack Armstrong (“Respondent”) and the Director of the Division of Environmental Quality¹ (DEQ or “Division”), it is hereby agreed and stipulated by all parties that the following Findings of Fact and Order and Agreement be entered.

FINDINGS OF FACT

1. Respondent owns property located at Miller County 294 and Private Road 1220, off Highway 196 just past Coca Cola Road, Texarkana, Miller County, Arkansas (“the Site”).
2. Pursuant to Ark. Code Ann. § 8-6-207(a)(1), DEQ is authorized “to administer and enforce all laws, rules, and regulations related to solid waste disposal[.]”

¹ Pursuant to Act 910 of 2019, the Arkansas Transformation and Efficiencies Act, the former Arkansas Department of Environmental Quality is now the Division of Environmental Quality in the newly-created Department of Energy and Environment.

3. Ark. Code Ann. § 8-6-203(9) defines “Solid waste” as “any garbage or refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges[.]”
4. Ark. Code Ann. § 8-6-203(1) defines “Disposal Site” as “any place at which solid waste is dumped, abandoned, or accepted or disposed of for final disposition by incineration, landfilling, composting, or any other method[.]”
5. Pursuant to APC&EC Reg. 22.102, “open dump” means a “site that has been used for the disposal of solid waste which is not a permitted solid waste disposal facility.”
6. Ark. Code Ann. § 8-6-205(a)(1) states the following:
 - (a) It shall be illegal for any person:
 - (1) To violate any provision of this subchapter or any rule, regulation, or order of the Arkansas Pollution Control and Ecology Commission issued pursuant to this subchapter or of a permit issued under this subchapter by the Division of Environmental Quality.
7. Ark. Code Ann. § 8-6-205(a)(2), (3), and (5) state the following:
 - (a) It shall be illegal for any person:
 - (2) To construct, install, alter, modify, use, or operate any solid waste processing or disposal facility or disposal site without a permit from the division;
 - (3) To dispose of solid wastes at any disposal site or facility other than a disposal site or facility for which a permit has been issued by the division. However, no provision of this subchapter shall be construed so as to prevent an individual from disposing of solid wastes resulting from his or her own household activities on his or her own land if the disposal does not create a public or private

- nuisance or a hazard to health and does not violate a city ordinance or other law and does not involve the open dumping of garbage; [and],
- (5) To sort, collect, transport, process, or dispose of solid waste contrary to the rules, regulations, or orders of the department or in such a manner or place as to create or be likely to create a public nuisance or a public health hazard or to cause or be likely to cause water or air pollution within the meaning of the Arkansas Water and Air Pollution Control Act, § 8-4-101 *et seq.*

8. On February 28, 2019, DEQ conducted an investigation in response to a complaint pertaining to illegal solid waste disposal activities at the Site. The inspection report is incorporated herein by reference. The following violations were identified during the investigation:

- a. **Ark. Code Ann. § 8-6-205(a)(2) – Failure to obtain a valid permit from DEQ to operate a solid waste disposal site.** During the investigation DEQ observed multiple piles of solid waste disposed by open dumping. Waste piles consisted of household wastes, construction and demolition (C&D) wastes disposed near the edge of water, and bulky wastes such as furniture and electronic wastes. The Site was being used and operated as a solid waste disposal site. Using and operating a solid waste disposal site without a permit from DEQ is a violation of Ark. Code Ann. § 8-6-205(a)(2) and, therefore, is a violation of APC&EC Reg. 22.1502(a).
- b. **Ark. Code Ann. § 8-6-205(a)(3) – Failure to dispose of solid waste at a site or facility with a permit from DEQ.** Solid wastes such as construction debris, household waste, electronic wastes, and a dead animal floating in a body of water were observed at the Site, which has not been issued a DEQ permit. Disposing of solid waste at an unpermitted site is a violation of Ark. Code Ann. § 8-6-205(a)(3) and, therefore, is a violation of APC&EC Reg. 22.1502(b).
- c. **Ark. Code Ann. § 8-6-205(a)(5) – Failure to properly dispose of solid waste pursuant to the rules and regulations and/or in a manner as to not create a public nuisance or public health hazard.** At the time of the investigation, DEQ observed multiple piles of household wastes, wood wastes, C&D wastes, and electronic wastes and partially burned wood wastes at the Site. Pursuant to **APC&EC Reg. 22.416(b)**, “Open burning of solid waste...is prohibited[.]” Processing and disposing of solid waste contrary to the rules, regulations, or orders of the Division is a violation of Ark. Code Ann. § 8-6-205(a)(5).

9. On March 19, 2019, DEQ mailed a certified letter to Respondent citing violations observed during the February 28, 2019 complaint investigation. This letter included a copy of the complaint investigation report and informed Respondent that a copy of the complaint investigation report had been referred to Office of Land Resources Enforcement Section for formal enforcement action. This letter informed Respondent that solid waste disposal activities should immediately cease and that the violations should be promptly corrected.
10. On October 7 2019, Mrs. Armstrong responded to the CAO. On October 15, 2019, Compliance addressed the remaining requirements to correct the violations. Enforcement immediately forwarded this information to the Respondent.
11. On November 11, 2019, Respondent submitted documentation to DEQ which sufficiently addressed all noted violations and requested a reduction in the civil penalty, which was approved by the Director in May, 2020.

ORDER AND AGREEMENT

Respondent and DEQ hereby stipulate and agree as follows:

1. All documents required by this CAO to be submitted to DEQ, excluding the penalty payment required by Paragraph 2 below, shall be electronically emailed to olrenforcement@adeq.state.ar.us, and submitted by Certified Mail or hand delivered to Alberta Hires, Enforcement, Office of Land Resources, DEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317.
2. In compromise and full settlement of this matter, Respondent agrees to pay a reduced civil penalty in the amount of TWO HUNDRED FIFTY DOLLARS (\$250.00) if this

Order is signed and returned within twenty (20) days of receipt of this Consent Administrative Order to the Office of Land Resources, DEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317.

Payment is due within thirty (30) calendar days of the effective date of this CAO. Penalty payment shall be made payable to DEQ, Attention: 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 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 adequately respond in writing within the timeframe specified by DEQ constitutes a failure to meet the requirements established by this CAO. Respondent consents and agrees to pay, on demand, to DEQ civil penalties according to the following schedule for failure to meet any deadlines required by this CAO as follows:

- | | | |
|----|--|--------------------|
| 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.

4. 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 the delay, the precise cause of the delay, and the measures being taken to correct and minimize the delay.

5. DEQ may grant an extension of any provision of this CAO provided that the delay has been or will be caused by circumstances beyond the control of, and without the fault of, Respondent. The burden of proving such cause of delay rests with Respondent. Any extension shall be in the form of an Amendment to this CAO and shall be mutually agreed upon by both DEQ and Respondent. Respondent's failure to meet the burden of proof regarding cause of delay or its failure to notify DEQ of any delay within the timeframes specified in this CAO shall result in the denial of an extension.
6. 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.
7. This CAO is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d) and the Arkansas Pollution Control and Ecology Commission Regulation 8, and is therefore 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 or based on any other considerations that may subsequently come to light. Notwithstanding the public notice requirements, the corrective actions necessary to achieve compliance shall be initiated by Respondent within the stated time frames. 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 CAO is granted by the Commission.

8. The undersigned individual certifies that he or she is authorized to execute this CAO and to legally bind that party to its terms and conditions.

SO ORDERED THIS 10th DAY OF September 2020.



BECKY W. KEOGH
DIRECTOR
DIVISION OF
ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:
MACK ARMSTRONG

BY: Signature 

Print Name MACK ARMSTRONG

Title _____

Date 7/13/20