

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

SOUTHSIDE SCHOOL DISTRICT  
70 SCOTT DRIVE  
BATESVILLE, ARKANSAS 72501

AFIN 32-00114

LIS 19- 053

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) Regulation 22 (Reg. 22). The issues herein having been settled by the agreement of Southside School District (“Respondent”) and the Director of the Arkansas Department of Environmental Quality (ADEQ or “Department”), 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. Southside School District, located at 70 Scott Drive, Batesville, Independence County, Arkansas (“the Site”), is composed of four (4) campuses that accommodate approximately 1,800 students from Pre-Kindergarten through 12th grade.
2. Pursuant to Ark. Code Ann. § 8-6-207 (a)(1), ADEQ is authorized “to administer and enforce all laws, rules, and regulations related to solid waste disposal.”
3. Ark. Code Ann. § 8-6-203(1) defines “Disposal Site” as, “[A]ny place at which solid waste is dumped, abandoned, or accepted or disposed of for final disposition by incineration, landfilling, composting, or any other method[.]”

4. Pursuant to APC&EC Reg. 22.102, "open dump" means a "site that has been used for the disposal of solid waste that is not a permitted solid waste disposal facility."
5. Ark. Code Ann. § 8-6-205(a)(1) states:
  - (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 Arkansas Department of Environmental Quality.
6. 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 department;
    - (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 department. 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;
    - (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.*
7. On April 15, 2015, ADEQ conducted an investigation in response to a complaint pertaining to illegal solid waste disposal activities at the Site. Specific observations documented by ADEQ during this investigation included the presence of multiple piles of construction and demolition (C&D) waste including metal, lumber, wires, plastic, roofing material, and carpet.

8. On April 16, 2015, ADEQ mailed a letter to Respondent citing violations observed during the April 15, 2015 complaint investigation. This letter informed Respondent that solid waste disposal activities should immediately cease and that the violations should be promptly corrected.
9. On April 29, 2015, Respondent submitted its written response to ADEQ's letter of April 16, 2015, with an action plan to correct the alleged significant violations. The April 29, 2015 written response is incorporated by reference.
10. On September 10, 2015, ADEQ determined that Respondent has addressed the alleged significant violations cited during the April 15, 2015 investigation and no further action was required at that time.
11. On August 29, 2018, an ADEQ inspector conducted an investigation in response to a complaint pertaining to illegal solid waste disposal activities at the Site. The complaint alleged that Respondent was dumping, burying, and burning bulky waste, household waste, and C&D waste at the Site.
12. During the August 29, 2018 investigation, ADEQ observed the following violations:
  - a. **Ark. Code Ann. § 8-6-205(a)(2) – Failure to obtain a valid permit from ADEQ to operate a solid waste disposal site.** During the investigation, ADEQ observed multiple piles of solid waste disposed by open dumping and open burning; waste piles consisted of household wastes, C&D wastes, and bulky wastes such as furniture and metal. 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 ADEQ is a violation of Ark. Code Ann. § 8-6-205(a)(2) and, therefore, is a violation of APC&EC Reg. 22.1502(a). Note: This violation was also cited during the April 15, 2015 complaint investigation.
  - b. **Ark. Code Ann. § 8-6-205(a)(3) – Failure to dispose of solid waste at a site or facility with a permit from ADEQ.** Solid wastes such as construction debris, household waste, and various metal wastes were observed at the Site, which has not been issued an ADEQ 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). Note: This violation was also cited during the April 15, 2015 complaint investigation.

- 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, ADEQ observed multiple charred piles of household wastes, C&D wastes, and bulky wastes disposed of by open burning along the Eastern edges of the Site. Pursuant to APC&EC Reg. 22.416(b) - Air Criteria, “Burning Prohibition- Open burning of solid waste...is prohibited...” Processing and disposing of solid waste contrary to the rules, regulations, or orders of the department is a violation of Ark. Code Ann. § 8-6-205(a)(5).

13. On August 29, 2018, ADEQ contacted the Respondent via phone during the complaint investigation at the Site. Respondent was informed the solid waste disposal activities were a violation of Ark. Code Ann. § 8-6-205 and ADEQ would be corresponding with Respondent and require a corrective plan of action for the violations listed above in paragraph 12. ADEQ mailed a certified letter dated September 6, 2018 to Respondent citing violations observed during the August 29, 2018 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.
14. On March 26, 2019 and April 1, 2019, Respondent submitted documentation to ADEQ, for review and approval, detailing activities to correct the violations described in paragraph 12 of the Findings of Fact section, in accordance with APC&EC Reg. 22. Documentation included, but was not limited to, photographs and receipts of disposal from a facility or site permitted by ADEQ to accept and properly dispose of solid waste.

#### **ORDER AND AGREEMENT**

Respondent and ADEQ hereby stipulate and agree as follows:

1. **Respondent shall immediately cease all unpermitted solid waste disposal activities at the**

Site. These activities include, but are not limited to, collecting, transporting, dumping, burning, and burying of solid waste at the Site.

2. In compromise and full settlement of this matter and conditioned on compliance with paragraph 3 below, Respondent agrees to pay a civil penalty in the amount of **ONE THOUSAND DOLLARS (\$1,000.00)**. Payment is due within thirty (30) calendar days of the effective date of this CAO. Penalty payment shall be made payable to ADEQ, 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, ADEQ shall be entitled to attorneys' fees and costs associated with collection.
3. From the effective date of this order through August 29, 2020, if Respondent is found, pursuant to an order issued by the Department, APC&EC, or Circuit Court Judge, in violation of Ark. Code Ann. § 8-6-205 *et. seq.* and/or APC&EC Regulation 22, Respondent shall pay the full assessed penalty amount of **TWENTY THREE THOUSAND AND TWO HUNDRED DOLLARS (\$23,200.00)**, for the violations noted in this CAO, in addition to penalties imposed for any proposed violations committed within the next two years.
4. All requirements of this CAO are subject to approval by ADEQ. In the event of any deficiencies, Respondent shall submit any additional information or changes requested, or take additional actions specified by ADEQ to correct any such deficiencies within the timeframe specified by ADEQ. Failure to adequately respond in writing within the timeframe specified by ADEQ constitutes a failure to meet the requirements established by this CAO.

Respondent consents and agrees to pay, on demand, to ADEQ 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 ADEQ by reason of Respondent's failure to comply with this CAO.

- 5. Respondent shall notify ADEQ 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.
- 6. ADEQ 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 ADEQ and Respondent. Respondent's failure to meet the burden of proof regarding cause of delay or its failure to notify ADEQ of any delay within the timeframes specified in this CAO shall result in the denial of an extension.



7. Nothing contained in this CAO shall be construed as a waiver by ADEQ 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.
8. 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. ADEQ 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.

9. 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 June 2019.

Becky W. Keogh

BECKY W. KEOGH  
DIRECTOR  
ARKANSAS DEPARTMENT OF

ENVIRONMENTAL QUALITY APPROVED AS TO FORM AND CONTENT:

SOUTHSIDE SCHOOL DISTRICT

BY: Signature [Signature]  
Print Name Roger Rich  
Title Superintendent  
Date 5/29/19