

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

IN THE MATTER OF:

**STEPHENS PAPER COMPANY, LLC
P.O. BOX 177
STEPHENS, AR 71764**

AFIN 52-00318

LIS No. 19- 073

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (“Order”) is issued pursuant to the authority of the Arkansas Solid Waste Management Act, Ark. Code Ann. § 8-6-201 *et seq.*, and the Arkansas Pollution Control and Ecology Commission (APC&EC) Regulation No. 22.

The issues herein, having been settled by the agreement of Stephens Paper Company, LLC (“Respondent”) and the Division of Environmental Quality¹ (DEQ or “Division”), 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 paper recycling and processing facility located at 479 North Cannon Street in Stephens, Ouachita County, Arkansas (“the Facility”).
2. DEQ regulates the disposal of solid waste pursuant to the Arkansas Solid Waste Management Act, Ark. Code Ann. § 8-6-201, *et seq.*, and APC&EC Regulation 22.

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. DEQ, as administered by its Director, is the state agency charged with ensuring compliance with the Arkansas Solid Waste Management Act, Ark. Code Ann. § 8-6-201 *et seq.*

4. Ark. Code Ann. § 8-6-203(9) defines solid waste as follows:

(9) "Solid waste" means 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 that are point sources subject to permit under 33 U.S.C. § 1342, or source, special nuclear, or by-products material as defined by the Atomic Energy Act of 1954, 42 U.S.C. § 2011 *et seq.*;

5. 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[.]"

6. Ark. Code Ann. § 8-6-204:

(b) Civil Penalties. The Division is authorized to institute a civil action in any court of competent jurisdiction to accomplish any or all of the following:

(3) Recover all costs, expenses, and damages to the division and any other agency or subdivision of the state in enforcing or effectuating the provisions of this subchapter, including natural resource damages;

(4) Assess civil penalties in an amount not to exceed ten thousand dollars (\$10,000) per day for violations of this subchapter and of any rules, regulations, permits, or plans issued pursuant to this subchapter; or

(5) Recover civil penalties assessed pursuant to subsection (c) of this section.

7. Ark. Code Ann. § 8-6-205(a)(2) states:

(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.

8. Ark. Code Ann. § 8-6-205(a)(3) states in part:

(a) It shall be illegal for any person:

(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.”

9. Ark. Code Ann. § 8-6-205(a)(5) states:

(a) It shall be illegal for any person:

(5) To sort, collect, transport, process, or dispose of solid waste contrary to the rules, regulations, or orders of the division 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.”

10. APC&EC Regulation 22.102 defines “open dump” as, “a site that has been used for the disposal of solid waste which is not a permitted solid waste disposal facility.”

11. APC&EC Regulation 22.301(b) states:

(b) Authority – Act 237 of the 1971 Arkansas General Assembly, as amended, makes it unlawful to construct, install, alter, modify, use or operate any solid waste disposal or processing facility or site without a permit from the Division.

12. APC&EC Regulation 22.1502(a) states:

(a) No person shall construct, install, alter, modify or operate any solid waste processing or disposal facility or disposal site without a permit from the Division.

13. APC&EC Regulation 22.1502(b) states:

(b) Disposal Only at Permitted Facilities - No person shall dispose of solid waste at any disposal site or facility other than a disposal site or facility for which a permit has been issued by the Division, except that any on-site solid waste processing facility (composting) which processes solid waste from an individual household shall not be deemed to constitute a disposal site and shall not be required to obtain a permit, provided such a disposal does not create a public or private nuisance or hazard to health or the environment and does not violate a city ordinance or other law and does not involve the open dumping of garbage.

14. APC&EC Regulation 22.1502(d)(1) states:

(d) Prohibited Activities – No person shall:

(1) Violate any provision of Act 237 of 1971, as amended, commit any unlawful act under it, or violate any rule, regulation, or order of the Commission or a permit issued under this subchapter by the Division, and leave the state or or remove his person from the jurisdiction of this state;

15. On January 7, 2019, DEQ conducted a complaint investigation at the Facility. The complaint investigation report is incorporated herein by reference. The following violations were identified during the investigation:

- a. DEQ observed that an unpermitted solid waste disposal site had been constructed at the Facility. Respondent explained that plastic waste generated by processing recycled paper had been buried onsite and identified a disposal area measuring approximately 150 ft. by 150 ft. where plastic waste had been buried. The Site does not have a solid waste disposal permit, and is an open dump pursuant to APC&EC Reg. 22.102. Therefore, the conditions observed at the site constituted a violation of Ark. Code Ann. § 8-6-205(a)(2), as well as APC&EC Reg. 22.1502(a).
- b. Respondent showed DEQ personnel where Respondent was using the unpermitted disposal site at the Facility. Plastic waste was observed strewn and piled on the ground at the unpermitted disposal site. The disposal of solid waste at a facility that had not been issued a permit for such activities violated Ark Code Ann. § 8-6-205 (a)(3). This action also violated APC&EC Reg. 22.1502(b).
- c. During the investigation, DEQ observed exposed waste, including waste located in and near standing water. Disposal of solid waste contrary to the rules of the Arkansas Solid Waste Management Act and APC&EC Regulation No. 22, and in a manner that is likely to create a public nuisance, health hazard, or likely to cause

water or air pollution is a violation of Ark. Code Ann. § 8-6-205 (a)(5). This action also violated APC&EC Regulation 22.1502(d)(1).

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall immediately cease unpermitted disposal of solid waste.
2. Within sixty (60) calendar days of the effective date of this Order, Respondent shall submit to DEQ for review and approval a comprehensive report detailing the actions taken to excavate all improperly disposed of solid waste cited in Paragraph 15 of the Findings of Fact. This report shall include the methods and practices taken to remove the waste, photographic evidence of disposal, and written records from a permitted facility showing that the waste was properly disposed.
3. All documents required by this Order to be submitted to DEQ, excluding the penalty payment required by Paragraph 4 below, shall be emailed to (Rebecca Rathe), Enforcement, Office of Land Resources, at enforcement@adeq.state.ar.us, and submitted by Certified Mail or hand delivered to Rebecca Rathe, Enforcement, Office of Land Resources, DEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317.
4. In compromise and full settlement for instances of noncompliance specified in the Findings of Fact, Respondent agrees to pay the sum of **Sixteen Thousand Eight Hundred Dollars (\$16,800.00)**, or one-half of the full civil penalty of **Eight Thousand Four Hundred Dollars (\$8,400.00)** if this Order is signed and returned to the Office of Land Resources, Enforcement Branch, DEQ, 5301 Northshore Drive, North Little Rock, Arkansas, 72118-5317, within twenty (20) calendar days of receipt of this Order. 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 Fiscal Division,

5301 Northshore Drive, North Little Rock, Arkansas 72118-5317. 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.

5. All requirements of this Order 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 Order.
6. If Respondent fails to meet any requirement of this Order within the deadline established by the Order, 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 Order.


7. 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 Order, specifying in detail the anticipated length of delay, the precise cause of delay, and the measures being taken to correct and minimize the delay.

8. DEQ 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 DEQ promptly, as provided in the preceding Paragraph of this Section, shall be grounds for a denial of an extension.
9. Nothing contained in this Order shall be construed as a waiver by DEQ of its authority over alleged violations not specifically addressed herein. This Order 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 Order does not exonerate any past, present, or future conduct not expressly addressed herein.
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. DEQ 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. 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 Order 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 22 DAY OF August 2019.


BECKY W. KEOGH
DIRECTOR
DIVISION OF
ENVIRONMENTAL QUALITY

**APPROVED AS TO FORM AND CONTENT
(RESPONDENT:)**

BY: Signature 
Print Name Scott Robertson
Title managing Partner
Date 8.19.19