ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

ARMTEC COUNTERMEASURES CO.
HIGHWAY 203 EAST
HIGHLAND INDUSTRIAL PARK, BLDG R-1
EAST CAMDEN, ARKANSAS 71701
EPA ID No. ARD980867873
AFIN 07-00261
PERMIT NO. 26H-RN1 **LIS 19-** 028

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (CAO) is issued pursuant to the authority of the Arkansas Hazardous Waste Management Act of 1979, Ark. Code Ann. § 8-7-201 *et seq.*, the Remedial Action Trust Fund Act, Ark. Code Ann. § 8-7-501 *et seq.*, and Arkansas Pollution Control and Ecology Commission (APC&EC) Regulation No. 23, APC&EC Regulation No. 8, and APC&EC Regulation No. 7. The issues herein having been settled by the agreement of Armtec Countermeasures Co. ("Respondent") and the Arkansas Department of Environmental Quality (ADEQ), 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's facility is located at Highway 203 East, Highland Industrial Park, BLDG R-1/R-15, East Camden, Calhoun County, Arkansas ("the Site").
2. Respondent manufactures flares and explosive ordnances for the United States Department of Defense. Respondent generates hazardous waste at the Site that consists of off-specification waste explosives and explosives that have been contaminated with foreign materials.
3. Respondent is a Small Quantity Generator of hazardous waste.

4. Respondent was issued Resource Conservation and Recovery Act Permit 26H-RN1 in 2007 for the thermal treatment of hazardous waste.

5. In the past three (3) years, Respondent has entered CAOs 18-064 and 17-025 with ADEQ.

6. Ark. Code Ann. § 8-7-204(c) provides that each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment and authorizes ADEQ to assess an administrative civil penalty not to exceed twenty-five thousand dollars ($25,000) per day for violations of any provision of the Arkansas Hazardous Waste Management Act (the Act) and any regulation or permit issued pursuant to the Act.

7. Ark. Code Ann. § 8-7-205(1) states, "It shall be unlawful for any person to ... [v]iolate any provisions of this subchapter or of any rule, regulation, permit, or order adopted or issued under this subchapter...."

8. ADEQ received a Noncompliance Report (NCR) from Respondent dated March 20, 2018. According to the NCR, on March 13, 2018, it was discovered that material not completely produced at the Site and identified for off-site treatment had been mixed with normal production waste material and treated on-site.

9. Based on a review of the NCR, ADEQ identified the following violations:

   a. According to the NCR, a bag of flares containing perchlorate was placed into a container destined for open burning at Respondent's permitted open burn unit and ultimately treated. The Waste Analysis Plan submitted with Respondent's Part B application for Permit 26H-RN1 contains tables of waste types to be treated at the open burn unit. The table indicated incinerated flares would only contain magnesium, Teflon, and Fluorel. Treating flares with constituents not listed on the Waste Analysis Plan is not allowed by the Permit and is a violation of Permit 26H-RN1, Module XIV.C.2., which states that the

Permittee is prohibited from treating hazardous waste not identified in Permit Module XIV, Condition C.1.

b. According to the NCR, ADEQ did not receive the NCR until March 20, 2018. The incident occurred on March 13, 2018. This is two (2) calendar days past the five (5) day deadline to provide a written report to ADEQ. Further, the NCR did not include the exact time that the incident occurred or any steps that have been taken by Respondent to reduce, eliminate, and prevent future reoccurrences of noncompliance. This is a violation of APC&EC Reg. 23 §270.30(1)(6)(G)(iii) and Permit 26H-RN1, Module I.E.14.C., which states that a written submission shall be provided within five (5) calendar days of the time the Permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period(s) of noncompliance (including exact dates and times); whether the noncompliance has been corrected; and, if not, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

10. On April 4, 2018, ADEQ mailed Respondent a review of the March 20, 2018 NCR, listing the significant violations cited above in Paragraphs 9.a. and 9.b.

11. On May 3, 2018, ADEQ received a response to the review from Respondent indicating the time of the incident and corrective actions that have been taken to reduce, eliminate and prevent recurrence of noncompliance.

ORDER AND AGREEMENT

Respondent and ADEQ hereby stipulate and agree as follows:

1. Upon the effective date of this CAO, Respondent shall submit documentation to ADEQ of the training provided to all technicians as a result of the incident.

2. Respondent shall submit to ADEQ one (1) electronic and one (1) hard copy of all reports, documents, plans or specifications required under the terms of this Order.

3. All submittals required by the Order, excluding the requirement for the payment submittal in paragraph 5 below, shall be electronically emailed to porterg@adeq.state.ar.us, and submitted by Certified Mail or hand delivered to Gina Porter, Enforcement, Office of Land Resources, ADEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317.

4. All submittals shall be subject to applicable review fees pursuant to APC&EC Regulation No. 23 § 6(t).

5. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of TWO THOUSAND ONE HUNDRED FIFTY DOLLARS ($2,150.00). Payment is due within thirty (30) calendar days of the effective date of this Order. Such 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 of collection, as well as all other lawful fees and penalties.

6. All requirements of the Order and Agreement 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 Order.

7. If Respondent fails to submit to ADEQ any reports or plans, or meet any other requirement of this Order within the applicable deadline established in the Order, ADEQ may assess stipulated penalties for delay in the following amounts:

1. First day through the fourteenth day: $250 per day
2. Fifteenth day through the thirtieth day: $1,250 per day
3. Each day beyond the thirtieth day: $2,500 per day

These stipulated penalties may be imposed for delay in scheduled performance and 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 the requirements of this Order.

8. Respondent shall notify ADEQ 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. Such notification or request for extension shall be made in writing and prior to the deadline.

9. ADEQ may grant a written extension of any provision of this Order, provided that Respondent requested such an extension in writing and provided that the delay or anticipated delay has been 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 fault of Respondent and the length of delay attributable to such circumstances shall rest with Respondent.

10. Nothing contained in this Order shall be construed as a waiver of ADEQ's enforcement authority over violations not specifically addressed herein, nor does this Order exonerate past, present, or future conduct which is not expressly addressed herein. Nothing contained herein shall relieve Respondent of any other obligations imposed by any local, state, or federal laws, nor shall this Order be deemed in any way

to relieve Respondent of its responsibilities for obtaining or complying with any necessary permits or licenses.

11. This Order is subject to public review and comments in accordance with Ark. Code Ann. § 8-4-103(d) and is therefore not effective until thirty (30) calendar days after public notice of the Order is given. ADEQ retains the right and discretion to rescind this Order based on comments received within the thirty-day public comment period or based on any other considerations which may subsequently come to light. Additionally, this Order is subject to being reopened upon APC&EC initiative or in the event a petition to set aside this Order is granted by the Commission.

12. By virtue of the signature appearing below, the individual represents that he or she is an Officer of Respondent, being duly authorized to execute and bind Respondent to the terms contained herein. Execution of this Order by an individual other than an Officer 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 29 **DAY OF** March **2019.**

Becky W Keogh

BECKY W. KEOGH
DIRECTOR
ARKANSAS DEPARTMENT OF
ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

ARMTEC COUNTERMEASURES CO.

BY: **Signature** _____

Print or Type Name Charles King

Title Dir of EHS

Date March 6, 2019

STATE OF ARKANSAS
Department of Finance and Administration

REVENUE LEGAL COUNSEL
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August 12, 2008

Mr. Greg Yielding, Executive Director
Arkansas Rice Growers Association
P. O. Box 95266
North Little Rock, AR 72190

Dear Mr. Yielding:

This is in response to your recent request for an opinion as to whether an assessment made under the Arkansas Rice Research and Promotion Act of 1979 (Ark. Code Ann. § 2-20-501 et seq.) constitutes a tax or a fee. Ark. Code Ann. § 26-18-104(13) defines the term "state tax" as "...any tax, or any fee for a license, permit or registration which is payable to, collected by, or administered by the Revenue Division, Department of Finance and Administration... ." The rice assessment under the Act is collected by the Department of Finance and Administration [Ark. Code Ann. § 2-20-507(b)]. Therefore, the rice assessment constitutes a "state tax" as defined by the Arkansas Code.

Arkansas Supreme Court case law also provides guidance with regard to the distinction between a tax and a fee. In the case of *Barnhart vs. City of Fayetteville*, 321 Ark 197, 900 S.W. 2d 539 (1995), the Supreme Court stated that "a governmental levy of a fee, in order not to be denominated a tax by the courts, must be fair and reasonable and bear a reasonable relationship to the benefits conferred on those receiving the services." (321 Ark. at 205, citations omitted) The court also stated that a fee is related to the services provided to the one paying the fee, while a tax bears no such relation to the services provided.

Applying this test, the Rice Promotion Assessment is akin to a tax, as opposed to a fee. The assessment collected from the buyer is used in part to pay for market development and promotion. The assessment collected from the producer is likewise used for rice extension and rice research. The rice buyer does not receive greater market development and promotion services depending on the amount of assessment paid. Likewise, a rice producer does not receive greater rice extension or research services based on the amount paid under the assessment. The services provided to either the rice buyer or the rice producer bear no relationship to the

amount of assessment paid by either party. Consequently, the assessment paid under the Rice Research and Promotion Act is a "state tax" under Arkansas Law.

Thank you for your consideration. If you have any questions, please call me at (501) 682-7037.

Sincerely,

William E. Keadle, Attorney
Revenue Legal Counsel

cc: John H. Theis, Assistant Commissioner
Policy and Legal

Martha Hunt, Chief Counsel
Revenue Legal Counsel

Tom Atchley, Administrator
Office of Excise Tax Administration