

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

TED DERDEN DBA
CUSTOM COLORS OF ARKANSAS
23 BROADMOOR CIRCLE
CABOT, ARKANSAS 72023
EPA ID No. ARR000026427
AFIN 43-00690

LIS 16-009

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (hereinafter "Order") is issued pursuant to the authority of the Arkansas Hazardous Waste Management Act, Ark. Code Ann. § 8-7-201 *et seq.*, the Arkansas Remedial Action Trust Fund Act, Ark. Code Ann. § 8-7-501 *et seq.*, and Arkansas Pollution Control and Ecology Commission (hereinafter "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 Ted Derden dba Custom Colors of Arkansas (hereinafter "Respondent") and the Arkansas Department of Environmental Quality (hereinafter "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 operates a mobile paint shop from an enclosed trailer that travels to car dealerships to perform minor paint repairs for dents and scratches. Respondent does not have a permanent location and performs all painting from the mobile trailer.
2. Respondent uses paint thinner as a solvent to clean out paint guns (hereinafter, "waste solvent"). According to the Material Safety Data Sheet provided by Respondent, the used paint thinner carries hazardous waste codes D001, F003, and F005.

3. Respondent is a Conditionally Exempt Small Quantity Generator of hazardous waste.
4. 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 (hereinafter “the Act”) and any regulation or permit issued pursuant to the Act.
5. 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....”
6. On August 6, 2015, ADEQ received an anonymous complaint alleging that Respondent was practicing unsafe storage and transportation of hazardous materials.
7. On August 21, 2015, ADEQ conducted a Compliance Evaluation Inspection (hereinafter “CEI”) at the Respondent’s facility. ADEQ mailed the CEI Report to Respondent on September 18, 2015, and the CEI Report is incorporated herein by reference.
8. Based on the findings of the August 21, 2015 CEI, ADEQ identified the following violations:
 - a. During the CEI, Respondent indicated that all waste solvent is accumulated in a five (5) gallon container located inside Respondent’s enclosed mobile paint trailer until it is full, which can take up to three (3) months. Once full, the waste solvent is delivered to O’Reilly Auto Parts at 4350 Stockton Drive in North Little Rock, Arkansas, where it is managed as hazardous waste, before being sent for disposal at a permitted treatment, storage, and disposal facility (hereinafter “TSDF”). An ADEQ records review showed that Respondent did not have an Environmental Protection Agency (hereinafter “EPA) identification number at the time of the CEI. This failure to possess an EPA identification number while transporting

hazardous waste is a violation of APC&EC Regulation No. 23 § 263.11(a) which states, “A transporter must not transport hazardous wastes in or through Arkansas without having received an EPA identification number.” Consequently, this is also a violation of Ark. Code Ann. § 8-7-205(1).

b. At the time of the CEI, Respondent did not have a hazardous waste transportation permit from the Arkansas Highway and Transportation Department (hereinafter “AHTD”). This failure to possess an AHTD hazardous waste transportation permit while transporting hazardous waste is a violation of APC&EC Regulation No. 23 § 263.13(a) which states in part, “Any person who transports hazardous waste in, from, or through the State of Arkansas shall comply with the permitting and other requirements of the Arkansas Highway and Transportation Department....” Consequently, this is also a violation of Ark. Code Ann. § 8-7-205(1).

c. During the CEI, Respondent indicated that hazardous waste manifests, or other shipping documentation for hazardous waste transport, are not used for the transport of the waste solvent. This is a violation of APC&EC Regulation No. 23 § 262.35(a)(5), which states in part, “Generators of conditionally-exempt small quantities of hazardous waste shall...[m]anifest and send hazardous waste via a transporter (that is permitted by the Arkansas Highway and Transportation Department)....” Consequently, this is also a violation of Ark. Code Ann. § 8-7-205(1).

9. On August 27, 2015, ADEQ assigned Respondent EPA identification number ARR000026427.

10. On October 26, 2015, ADEQ received a letter from Respondent in response to the CEI indicating that, on October 19, 2015, Respondent was issued AHTD Hazardous Waste Transportation Permit number H-1686C.

11. On October 27, 2015, ADEQ received documentation from Respondent indicating that Waste Services, Inc. will accept Respondent's hazardous waste for disposal.
12. In settlement of the violations, Respondent agrees to the following:

ORDER AND AGREEMENT

1. Respondent shall perform the following:
 - a. Within sixty (60) calendar days of the effective date of this Order, Respondent shall submit copies of hazardous waste manifests to ADEQ for review and approval for the first eight (8) weeks following the effective date of this Order.
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 of the Order, excluding the requirement for the payment submittal in paragraph 5 below, shall be electronically emailed to hesselbein@adeq.state.ar.us and submitted by Certified Mail or hand delivered to Josh Hesselbein, Enforcement and Inspection Branch, 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 THREE THOUSAND ONE HUNDRED TWENTY-FIVE DOLLARS (\$3,125.00) or one-half of the penalty, ONE THOUSAND FIVE HUNDRED SIXTY-TWO DOLLARS FIFTY CENTS (\$1,562.50) if this Order is signed and returned to Josh Hesselbein, Enforcement and Inspection Branch, Hazardous Waste Division, ADEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317, prior to 4:00 p.m. on January 8, 2016. 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. Respondent hereby designates a Contact Person who shall be responsible for overseeing the implementation of the requirements of this Order. The Contact Person shall communicate with ADEQ on all technical issues which arise under this Order and shall be empowered to agree on minor modifications in the implementation of any of the requirements of this Order when such modifications are deemed by ADEQ to further the purpose of this Order. Respondent may change their Contact Person by providing written notice of such change to ADEQ. The initial Contact Person shall be:

Ted Derden
Custom Colors of Arkansas
23 Broadmoor Circle
Cabot, Arkansas 72023
Ph No. (501) 259-8451
tedderden@yahoo.com

7. All requirements by 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.
8. 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:
 - a. First day through the fourteenth day: \$250 per day
 - b. Fifteenth day through the thirtieth day: \$1,250 per day

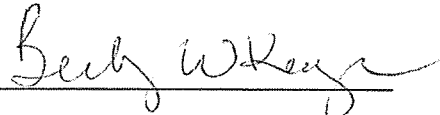
c. Each day beyond the thirtieth day: \$2,500 per day

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.

9. If any event occurs, including but not limited to natural disasters, which causes or may cause a delay by Respondent in achieving the requirements of this Order, Respondent shall notify ADEQ in writing as soon as it is apparent that a delay may result. Such request shall be made prior to the deadline. The written notice shall describe in detail the anticipated length of delay, the precise cause of delay, the measures taken to address the delay and to be taken to minimize the delay, and the timetable by which those measures will be implemented.
10. 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.
11. 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.

12. 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.
13. Each of the undersigned representatives of the parties certifies that he or she is authorized to execute this Order and to legally bind that party to its terms and conditions.

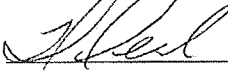
SO ORDERED THIS 19 DAY OF January 2016.



BECKY W. KEOGH
DIRECTOR
ARKANSAS DEPARTMENT OF
ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

TED DERDEN DBA
CUSTOM COLORS OF ARKANSAS

BY: Signature 
Print or Type Name Ted Darden
Title owner
Date 1-7-16