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Wastewater Enforcement: Arkansas Department of Environmental Quality and Union County, Arkansas Hazardous Waste Disposal Facility Enter into Consent Administrative Order

Arkansas Environmental, Energy, and Water Law Blog

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The Arkansas Department of Environmental Quality (“ADEQ”) and Clean Harbors El Dorado, LLC (“Clean Harbors”) entered into a December 22nd Consent Administrative Order (“CAO”) addressing alleged violations of a Clean Water Act National Pollution Discharge Elimination System (“NPDES”) permit.

Clean Harbors operates a hazardous waste disposal facility (“facility”) located in El Dorado, Arkansas.

The facility is stated to discharge treated wastewater and contaminated storm water to Boggy Creek pursuant to an NPDES permit.

The CAO provides that Clean Harbors notified ADEQ on November 5, 2014 that it had discovered during an internal audit that in the past five years 1, 2-Dichloroethene was monitored instead of the required 1,2-Dichloroethane. It further states that beginning with the monitoring period January, 2008, through the monitoring period ending December 31, 2014, Clean Harbors failed to conduct analyses for 1,2-Dichloroethane as required by its NPDES permit. A total of 160 Discharge Monitoring Report (“DMR”) values for 1,2-Dichloroethane were stated to have been required to be reported.

Clean Harbors and ADEQ met to discuss the alleged monitoring violations and the agency requested the corrected DMRs be submitted to reflect the referenced monitoring violations. Corrected DMRs are stated to have been submitted by Clean Harbors to reflect the alleged monitoring violations.

The DMRs are alleged to identify certain effluent discharge limit violations from April 1, 2013 through August 31, 2016 as follows:

- Two violations for Discharge Flow as Percent of Upstream Flow
- Five violations for Total Recoverable Mercury
- Five violations for Total Recoverable Lead
- Six violations for 1,2-Dichloroethane

ADEQ requested and Clean Harbors submitted to the agency a proposed Corrective Action Plan (“CAP”) that was subsequently revised. The CAP is stated to have proposed that the effluent violations were caused by contaminated groundwater seeps. The CAP proposed the relocation of an outfall as a corrective action.

ADEQ is stated to have failed to approve either the CAP, or the corrective actions because of the conclusion they did not adequately address how the contaminated groundwater seeps would be addressed following the relocation of outfall 009.

Clean Harbors subsequently submitted a Scoping Plan to address the effluent violations and the agency responded with no objections. A CAP was submitted in July, 2016 addressing the lead and 1,2-Dichloroethane violations with plans to eliminate contaminated groundwater seeps. The agency requested a revised plan which was subsequently discussed by both parties in an attempt to determine what specific changes needed to be included in the revised CAP. ADEQ subsequently requested that Clean Harbors submit a revised CAP to the agency no later than November 17, 2016 that includes corrective actions for mercury effluent violations as well as more detailed information about the plans to eliminate contaminated groundwater seeps.

The CAO requires that Clean Harbors submit to ADEQ by the effective date of the CAO or January 2nd (whichever is later) a revised CAP (previously described) which shall include information requested by the agency. In addition, it is required that the revised CAP, at a minimum, include a reasonable milestone schedule with final compliance no later than one year after agency approval of the CAP.

The CAP is required to detail the methods and best available technologies achievable that will be used to correct the violations alleged by the agency and prevent future violations. Upon the review and approval by the agency, Clean Harbors is required to comply with the terms and the milestone schedule contained in the revised CAP, and the approved revised CAP, milestone schedule and compliance date as specified in the CAO.

Quarterly progress reports in regards to these requirements also must be submitted to the agency.

A civil penalty of \$33,000 is assessed.

[A copy of the CAO can be downloaded below.](#)