

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT,
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

AFIN: 88-01581

LIS No. 21-076

R.E.C. TRANSPORT, INC.
250 JIMMY LILE ROAD
RUSSELLVILLE, ARKANSAS 72802

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (CAO) is issued pursuant to the authority delegated under the federal Clean Air Act, 42 U.S.C. § 7401 *et seq.*, and the federal regulations issued thereunder. In addition, this CAO is issued pursuant to the authority of the Arkansas Water and Air Pollution Control Act (the Act), Ark. Code Ann. § 8-4-101 *et seq.*, Pollution Control and Ecology Commission (PC&EC) Regulation 7, PC&EC Regulation 8, PC&EC Regulation 18, PC&EC Regulation 19, and PC&EC Regulation 26.

The issues herein having been settled by agreement of R.E.C. Transport, Inc. (Respondent) and the Director of the Division of Environmental Quality¹ (DEQ), it is hereby agreed and stipulated that the following FINDINGS OF FACT and ORDER AND AGREEMENT be entered.

FINDINGS OF FACT

1. Respondent owns and operates an Air Curtain Incinerator located at 250 Jimmy Lile Road in Russellville, Pope County, Arkansas.

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 Arkansas Department of Energy and Environment. The former Arkansas Pollution Control and Ecology Commission (APC&EC) is now Pollution Control and Ecology Commission (PC&EC).

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2. The Air Permit referenced in this CAO is Tracking No. 2370-AGP-011, which indicates authority to operate under the General Air Permit for Title V Air Curtain Incinerators (the Permit). The Permit was issued on March 13, 2019.

Ark. Code Ann. § 8-4-217(a)(3) provides:

(a) It shall be unlawful for any person to:

...
(3) Violate any provisions of this chapter or of any rule or order adopted by the Pollution Control and Ecology Commission under this chapter or of a permit issued under this chapter by the Division of Environmental Quality;

3. Ark. Code Ann. § 8-4-103(c)(1)(A) provides, “Any person that violates any provision of this chapter and rules, permits, or plans issued pursuant to this chapter may be assessed an administrative civil penalty not to exceed ten thousand dollars (\$10,000) per violation.”

4. Pursuant to Ark. Code Ann. § 8-4-103(c)(1)(B) as referenced by Ark. Code Ann. § 8-4-304, “Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment.”

5. On October 20, 2020, DEQ conducted a full compliance inspection of Respondent’s facility. The inspection covered the reporting period of March 2019 through September 2020.

6. The air curtain incinerator is subject to 40 C.F.R. Part 60, Subpart CCCC – Standards of Performance for Commercial and Industrial Solid Waste Incineration Units (Subpart CCCC).

7. Specific Condition 25 of the Permit states that within 60 days after the air curtain incinerator reaches the charge rate at which it will operate, but no later than 180 days after its

initial startup, the permittee must meet the two limitations as follows:

- a. The permittee must maintain opacity to less than or equal to 10 percent opacity (as determined by the average of three 1-hour blocks consisting of ten 6-minute average opacity values)
- b. The permittee must maintain opacity to less than or equal to 35 percent opacity (as determined by the average of three 1-hour blocks consisting of ten 6-minute average opacity values) during the startup period that is within the first 30 minutes of operation.

8. Plantwide Condition 3 of the Permit requires the permittee to test any equipment scheduled for testing, unless otherwise stated in the Specific Conditions of this permit or by any federally regulated requirements, within the following time frames:

- (1) New equipment or newly modified equipment within sixty (60) days of achieving the maximum production rate, but no later than 180 days after initial startup of the permitted source or
- (2) Operating equipment according to the time frames set forth by DEQ or within 180 days of permit issuance if no date is specified.

9. Plantwide Condition 3 of the Permit also requires Respondent to notify DEQ of the scheduled date of compliance testing at least fifteen (15) business days in advance of such test. The Permit was issued on March 13, 2019; the opacity testing was required to be conducted on or before September 9, 2019. Respondent conducted a single one hour block of opacity observations on April 23, 2019, April 30, 2019, and May 3, 2019. During the inspection, DEQ personnel reviewed the opacity observation records and determined that due to Respondent

conducting the opacity observations on different days, the opacity observations were invalid. Furthermore, Respondent failed to submit an Air Compliance – Stack Test Protocol Form to DEQ at least 15 working days before the test. Respondent failed to conduct the required opacity testing at the air curtain incinerator within 180 days of initial startup and the issuance of the Permit. Such failure violates Specific Condition 25 and Plantwide Condition 3 of the Permit and therefore violates Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304. Such failure also violates Subpart CCCC.

10. General Provision 7 of the Permit states that the permittee must submit reports of all required monitoring every six (6) months, the report is due on the first day of the second month after the end of the reporting period, and the report shall contain data for all monitoring requirements in effect during the reporting period. During the inspection, it was discovered that Respondent failed to submit two (2) Semi-Annual Monitoring (SAM) reports to DEQ by the due dates and failed to provide monthly and 12-month rolling total data in the reports. SAM report #1 was due on November 1, 2019 and was not received until August 20, 2020. SAM #2 was due on May 1, 2020 and was not received until August 20, 2020. Both SAM reports failed to include monthly and 12-month rolling total data required by the Permit. Such failures violate General Provision 7 of the Permit and therefore violates Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

11. In a letter dated October 26, 2020, DEQ informed Respondent of the compliance issues identified in the inspection conducted on October 20, 2020. This letter was intended to give Respondent an opportunity to review the issues identified and submit any additional information Respondent deems appropriate.

12. On November 30, 2020, Respondent submitted a response to the October 26, 2020 letter and provided the following information:

- A. Regarding the compliance issues listed in Paragraphs 8 and 9 above, Respondent stated that the facility would conduct the opacity testing in December 2020 and would submit an Air Compliance – Stack Test Protocol Form to DEQ.
- B. Regarding the compliance issues listed in Paragraph 10 above, Respondent stated that the facility is now aware of the proper format for the reports and steps have been put in place to make sure that this does not happen again.

13. On December 31, 2020, DEQ sent Respondent a formal enforcement letter for the compliance issues discovered during the October 20, 2020 compliance inspection.

14. On December 16, 2020, Alliance Source Testing submitted a Stack Testing Compliance Test Protocol Form to DEQ for testing of the Air Curtain Incinerator on December 28, 2020.

15. On February 9, 2021, Respondent submitted test results for Visible Emissions testing conducted at the Air Curtain Incinerator on December 28, 2020.

16. A review of the test results indicated that Respondent was in compliance with the permitted Visible Emission rate limits. The permitted Visible Emission rate limit is 35% during start-up and 10% during normal operations. The average Visible Emission rates recorded at the Air Curtain Incinerator during the testing was 9.2% at start-up and 6.7% during normal operations.

17. In a letter dated February 9, 2021, DEQ informed Respondent that after a review

of the Visible Emissions test results submitted on February 9, 2021, that the Air Curtain Incinerator was in compliance with the permitted Visible Emission rate limits at the time of testing.

18. On May 21, 2021, Respondent submitted an addendum to SAM reports #1 and #2 which included the monthly and 12-month rolling totals.

ORDER AND AGREEMENT

WHEREFORE, Respondent, neither admitting nor denying the factual and legal allegations contained in this CAO, and DEQ do hereby agree and stipulate as follows:

1. This CAO addresses all violations contained in the FINDINGS OF FACT.
2. In compromise and full settlement of the violations specified in the FINDINGS OF FACT, Respondent agrees to pay a civil penalty of **ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00)**. Payment is due within thirty (30) calendar days of the effective date of this CAO. Such payment shall be made payable to:

DEQ, 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, DEQ shall be entitled to attorneys' fees and costs associated with collection.

3. All applicable submissions required by this CAO are subject to approval by DEQ. In the event of any deficiency, Respondent shall, within fifteen (15) calendar days of notification by DEQ, submit any additional information requested. Failure to respond adequately to the notice of deficiency within fifteen (15) calendar days constitutes a failure to meet a deadline and is

subject to the civil penalties established in the following Paragraph.

4. Failure to meet the limits, requirements, or deadlines of this CAO or the applicable approved schedules provided for herein constitutes a violation of this CAO. If Respondent fails to meet any limits, requirements, or deadlines, Respondent shall pay, on demand, to DEQ civil penalties according to the following schedule:

- | | |
|--|----------------|
| (a) First day through the fourteenth day: | \$100 per day |
| (b) Fifteenth day through the thirtieth day: | \$500 per day |
| (c) More than thirty days: | \$1000 per day |

Stipulated penalties shall be paid within thirty (30) calendar days of receipt of DEQ's demand to Respondent for such penalties. These stipulated penalties may be imposed for delay in scheduled performance and shall be in addition to any other remedies or sanctions that may be available to DEQ by reason of Respondent's failure to comply with the requirements of this CAO. DEQ reserves its rights to collect other penalties and fines pursuant to its enforcement authority in lieu of the stipulated penalties set forth above.

5. If any event, including, but not limited to, an occurrence of nature, causes or may cause a delay in the achievement of compliance by Respondent with the requirements or deadlines of this CAO, Respondent shall notify DEQ in writing as soon as reasonably possible after it is apparent that a delay will result, but in no case after the due dates have passed. The notification shall describe in detail the anticipated length of the delay, the precise cause of the delay, the measures being taken and to be taken to minimize the delay, and the timetable by which those measures will be implemented.

6. DEQ may grant an extension of any provision of this CAO, provided that Respondent requests such an extension in writing and provided that the delay or anticipated delay

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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 DEQ promptly, as provided in the previous Paragraph of the ORDER AND AGREEMENT, shall be grounds for a denial of an extension.

7. This CAO is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d), and therefore is not effective until thirty (30) calendar days after public notice of the CAO is given. DEQ retains the right and discretion to rescind this CAO based on comments received within the thirty (30) day public comment period.


8. As provided by PC&EC Regulation 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. Nothing contained in this CAO shall relieve Respondent of any obligations imposed by any other applicable local, state, or federal laws. Except as specifically provided herein, nothing contained in this CAO shall be deemed in any way to relieve Respondent of responsibilities contained in the permit.

10. Nothing in this CAO shall be construed as a waiver by DEQ of its enforcement authority over alleged violations not specifically addressed herein. In addition, this CAO neither exonerates Respondent from any past, present, or future conduct that is not expressly addressed herein, nor relieves Respondent of the responsibilities for obtaining any necessary permits.

11. 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 CAO by an individual other than an Officer of Respondent shall be accompanied by a resolution granting signature authority to that individual as duly ratified by the governing body of the entity.

SO ORDERED THIS 26 DAY OF JULY, 2021.


BECKY W. KEOGH, DIRECTOR
ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT,
DIVISION OF ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

R.E.C. TRANSPORT, INC.

BY:  (Signature)

Bobby Childers (Typed or printed name)

TITLE: President

DATE: 7-19-21

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