

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

IN THE MATTER OF:

AFIN: 04-02663

LIS No. 24-070

LOWELL POLICE DEPARTMENT  
214 N. LINCOLN STREET  
LOWELL, ARKANSAS 72745

**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.*, Arkansas Pollution Control and Ecology Commission (APC&EC) Rule 7, APC&EC Rule 8, APC&EC Rule 18, and APC&EC Rule 19.

The issues herein having been settled by agreement of Lowell Police Department (Respondent) and the Director of the Division of Environmental Quality (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 incinerator located at 214 N. Lincoln Street in Lowell, Benton County, Arkansas.
2. The Air Permit referenced in this CAO is the General Air Permit for Minor Source Animal/Human Remains Incinerator Facilities 1976-AGP-000 (the Permit). Respondent is assigned

Tracking No. 1976-AGP-096, which indicates authority to operate under the Permit. The Permit was issued on January 27, 2021.

3. 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 Arkansas Pollution Control and Ecology Commission under this chapter or of a permit issued under this chapter by DEQ;

4. 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."

5. 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."

6. On March 6, 2023, DEQ personnel conducted a full compliance inspection of Respondent's facility. The inspection covered the reporting period of February 2022 through January 2023.

7. Specific Condition 9 of the Permit states that Respondent shall record the start time, stop time, date, and weight of each charge burned in each unit using a copy of the record sheets provided or a diary or computer record that contains the same information. A record shall also be kept of the secondary chamber's start- and mid-cycle temperature each time a unit is in operation. If the facility has more than one incinerator on-site, individual incinerator records shall be kept on separate log sheets.

8. During the inspection, it was discovered that Respondent failed to maintain records of

the start time, stop time, date, weight of each charge burned in each unit, and the secondary chamber's start- and mid-cycle temperature each time a unit is in operation for the entire reporting period covered by the inspection. Such failure violates Specific Condition 9 of the Permit and therefore violates Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

9. Specific Condition 10 of the Permit states that Respondent shall maintain records which demonstrate compliance with the hourly and annual charging rates established in the confirmation letter. These records shall be compiled by the fifteenth day of the month following the month to which the records pertain. For the annual charging rates, a twelve-month rolling total and each individual month's data shall be kept on-site, kept in accordance with General Condition 5, and shall be made available to DEQ personnel upon request.

10. During the inspection, it was discovered that Respondent failed to maintain the monthly and twelve-month rolling totals of the charging rates at the incinerator for the entire reporting period covered by the inspection. Such failures violate Specific Condition 10 of the Permit and therefore violate Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

11. Specific Condition 12 of the Permit states that Respondent shall conduct weekly observations of the visible emissions from the facility in order to determine proper operation of the equipment. These readings shall be conducted by someone familiar with the visible emissions from the facility. EPA Method 9 opacity training and certification is not required for this observation. Records of these observations shall be kept on-site, and be made available to DEQ personnel upon request. These records shall include the date and time of the observation, the name of the person making the observation, and whether the incinerator appears to be operating properly. These records shall be kept on-site, kept in accordance with General Condition 5, and shall be made available to

DEQ personnel upon request.

12. During the inspection, it was discovered that Respondent failed to maintain weekly visible emission records for the entire reporting period covered by the inspection. Such a failure violates Specific Condition 12 of the Permit and therefore violates Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

13. In a letter dated March 21, 2023, DEQ informed Respondent of the compliance issues identified during the investigation conducted on March 6, 2023. This letter was intended to give Respondent an opportunity to review the issues identified and submit any additional information Respondent deemed appropriate.

14. On May 5, 2023, DEQ sent Respondent a formal enforcement letter for the compliance issues discovered during the March 6, 2023 inspection.

### **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. To demonstrate compliance with Specific Conditions 9, 10, and 12 of the Permit, Respondent shall submit the monthly records and the twelve-month rolling totals required by Specific Conditions 9, 10, and 12 of the Permit. These records shall be submitted for three (3) consecutive months beginning with the month following the effective date of this CAO. The records shall be submitted by the fifteenth (15th) day of the following month for which they pertain.

2. 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**

**DOLLARS (\$3,100.00)**. Respondent shall make payment of **SEVEN HUNDRED SEVENTY-FIVE DOLLARS (\$775.00)** of the assessed monetary penalty within thirty (30) calendar days of the effective date of this CAO. The remaining **TWO THOUSAND THREE HUNDRED TWENTY-FIVE DOLLARS (\$2,325.00)** will be held in abeyance conditional on Respondent maintaining compliance with Specific Conditions 9, 10, and 12 of the Permit, demonstrated through the monthly records referenced in paragraph 1 of the ORDER AND AGREEMENT section of this CAO.

3. In the event that Respondent fails to maintain compliance with Specific Conditions 9, 10, and 12 of the Permit during the three (3) months of record submittals referenced in Paragraph 1 of the ORDER AND AGREEMENT section of this CAO, then payment of the remaining **TWO THOUSAND THREE HUNDRED TWENTY-FIVE DOLLARS (\$2,325.00)** shall be due within thirty (30) calendar days of being notified by DEQ.

4. Payment of the assessed monetary penalty 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.

5. 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.

6. 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.

7. 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.

8. 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 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.

9. 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.

10. As provided by APC&EC Rule 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.

11. 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.

12. 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.


13. This Order has been reviewed and approved by the City Council of the City of Lowell in a duly convened meeting with a quorum present. It is the intention of the City Council to be bound

by the terms appearing in the Order.

14. The City Council of the City of Lowell has authorized the Mayor and the City Clerk/Treasurer to sign this Order on behalf of the City.


15. The City Council of the City of Lowell has authorized the Mayor and City Clerk/Treasurer to expend funds for compliance activities required by this Order including but not limited to the payment of a civil penalty in the amount listed above.

SO ORDERED THIS 15<sup>th</sup> DAY OF April, 2024.

  
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CALEB J. OSBORNE  
DIVISION OF ENVIRONMENTAL QUALITY, DIRECTOR  
CHIEF ADMINISTRATOR, ENVIRONMENT  
ARKANSAS DEPARTMENT OF ENERGY & ENVIRONMENT

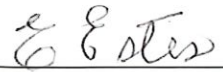
APPROVED AS TO FORM AND CONTENT:

LOWELL POLICE DEPARTMENT

BY:  (Signature)  
Chris Moore (Typed or printed name)

TITLE: Mayor

DATE: 4/8/24

BY:  (Signature)  
E. Estes (Typed or printed name)



TITLE: City Clerk/Treasurer

DATE: 4-9-24