

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT, DIVISION OF
ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Allowey Ahmed, Individual
2808 E. 28th Street
Brooklyn, NY 11235

AFIN 60-03685
Facility ID No. 60001806
LIS 24-098

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (CAO) is issued pursuant to the authority of Ark. Code Ann. § 8-7-801 *et seq.*, and the rules promulgated thereunder, in particular, Arkansas Pollution Control and Ecology Commission (APC&EC) Rule No. 12 (Storage Tanks). All Code of Federal Regulations references contained herein are incorporated by reference in APC&EC Rule No. 12.104.

The issues herein having been settled by the agreement of Allowey Ahmed, Individual, (Respondent), and the Arkansas Department of Energy and Environment, 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. DEQ regulates underground storage tanks pursuant to Ark. Code Ann. § 8-7-801, *et seq.* and APC&EC Rule No. 12.
2. DEQ, as administered by its Chief Administrator, is the state agency charged with ensuring compliance with Ark. Code Ann. § 8-7-801 *et seq.* and APC&EC Rule No. 12.
3. Ark. Code Ann. § 8-7-801(4) defines "Operator" as "any person in control of or having responsibility for the daily operation of an underground storage tank."

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4. Ark. Code Ann. § 8-7-801(5)(A)(i) defines "Owner" as, "in the case of an underground storage tank in use on November 8, 1984, or brought into use after November 8, 1984, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances."

5. Ark. Code Ann. § 8-7-801(8) defines "Regulated Substance" as "any substance defined in §101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601(14), but not including any substance regulated as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6921 *et. seq.*; and petroleum."

6. Ark. Code Ann. § 8-7-801(12) defines "Storage tank" as "an aboveground storage tank or underground storage tank as defined in this subchapter."

7. Ark. Code Ann. § 8-7-806(a)(1) provides:

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

...

(1) Violate any provisions of this subchapter or of any rule adopted by under this subchapter.

8. Respondent owns the underground storage tank located at 4017 E. Broadway Street, North Little Rock, Pulaski County, Arkansas. The tank is designated by DEQ as Tank No. 7. Tank No. 7 was installed in 2014, holds 14,000 gallons, and is divided into two (2) compartments. Tank Nos. 1 through 6 had previously been removed.

9. On April 18, 2022, DEQ conducted an inspection of Tank No. 7. During the inspection, Respondent was determined to be out of compliance due to the following violations:

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- a. Respondent failed to conduct groundwater and vapor monitoring for Tank No. 7 every thirty (30) days. Failure to perform release detection for Tank No. 7 violates 40 CFR § 280.41(a)(1).
- b. Respondent failed to conduct an annual line tightness test or monthly monitoring for the pipes connected to Tank No. 7. Failure to perform release detection for the pipes connected to Tank No. 7 violates 40 CFR § 280.41(b)(1)(i)(B).
- c. Respondent failed to provide corrosion protection for the submersible turbine pump (STP) sumps installed on Tank No. 7. Failure to provide corrosion protection to the STP sumps installed on Tank No. 7 violates 40 CFR § 280.20(b)(2).
- d. Respondent failed to inspect the cathodic protection system for Tank No. 7 every three (3) years. Failure to inspect the cathodic protection system for Tank No. 7 every three years violates 40 CFR § 280.31(b)(1).
- e. Respondent failed to designate a Class A and Class B operator for Tank No. 7. Failure to designate a Class A and Class B operator for Tank No. 7 violates APC&EC Rule No. 12.704(A)(1) and Ark. Code Ann. § 8-7-806(a)(3).

10. A copy of the inspection report was presented to Respondent's representative at the conclusion of the April 18, 2022, inspection. The inspection report required Respondent to submit evidence of compliance no later than May 3, 2022. Respondent failed to respond to the inspection report.

11. On May 26, 2022, and January 10, 2023, DEQ conducted follow-up inspections of Tank No. 7. No additional violations were found during the follow-up inspections.

12. Ark. Code Ann. § 8-7-802(a)(2)(A) authorizes the APC&EC to set fees for the annual registration of underground storage tanks.



13. Pursuant to APC&EC Rule No. 12.203, DEQ assesses the owner or operator an annual registration fee of seventy-five dollars (\$75.00) for each tank until it has been removed or otherwise permanently closed. A late fee of five dollars (\$5.00) per tank shall be imposed if the annual registration fee is not paid within thirty (30) days of the billing date of the applicable fee invoice. Non-payment of any tank fee is grounds for legal action and the assessment of civil penalties by the Division.

14. On May 14, 2014, DEQ issued invoice TKS-120043 to Respondent for the annual registration fee for Tank No. 7, with an amount due of seventy-five dollars (\$75.00). Respondent failed to make payment in a timely manner, and late charges of five dollars (\$5.00) accrued.

15. As of this date, Respondent failed to pay the invoice or the late fee. The total amount due and owing for invoice TKS-120043 is eighty dollars (\$80.00). Failure to pay the annual tank registration fee and late fee violates APC&EC Rule No. 12.203(A)(1) and Ark. Code Ann. § 8-7-806(a)(1).

16. On May 6, 2015, DEQ issued invoice TKS-125132 to Respondent for the annual registration fee for Tank No. 7, with an amount due of seventy-five dollars (\$75.00). Respondent failed to make payment in a timely manner, and late charges of five dollars (\$5.00) accrued.

17. As of this date, Respondent failed to pay the invoice or the late fee. The total amount due and owing for invoice TKS-125132 is eighty dollars (\$80.00). Failure to pay the annual tank registration fee and late fee violates APC&EC Rule No. 12.203(A)(1) and Ark. Code Ann. § 8-7-806(a)(1).

18. On May 16, 2017, DEQ issued invoice TKS-135475 to Respondent for the annual registration fee for Tank No. 7, with an amount due of seventy-five dollars (\$75.00). Respondent failed to make payment in a timely manner, and late charges of five dollars (\$5.00) accrued.



19. As of this date, Respondent failed to pay the invoice or the late fee. The total amount due and owing for invoice TKS-135475 is eighty dollars (\$80.00). Failure to pay the annual tank registration fee and late fee violates APC&EC Rule No. 12.203(A)(1) and Ark. Code Ann. § 8-7-806(a)(1).

20. On May 15, 2018, DEQ issued invoice TKS-140484 to Respondent for the annual registration fee for Tank No. 7, with an amount due of seventy-five dollars (\$75.00). Respondent failed to make payment in a timely manner, and late charges of five dollars (\$5.00) accrued.

21. As of this date, Respondent failed to pay the invoice or the late fee. The total amount due and owing for invoice TKS-140484 is eighty dollars (\$80.00). Failure to pay the annual tank registration fee and late fee violates APC&EC Rule No. 12.203(A)(1) and Ark. Code Ann. § 8-7-806(a)(1).

22. On May 14, 2019, DEQ issued invoice TKS-145401 to Respondent for the annual registration fee for Tank No. 7, with an amount due of seventy-five dollars (\$75.00). Respondent failed to make payment in a timely manner, and late charges of five dollars (\$5.00) accrued.

23. As of this date, Respondent failed to pay the invoice or the late fee. The total amount due and owing for invoice TKS-145401 is eighty dollars (\$80.00). Failure to pay the annual tank registration fee and late fee violates APC&EC Rule No. 12.203(A)(1) and Ark. Code Ann. § 8-7-806(a)(1).

24. On May 13, 2020, DEQ issued invoice TKS-150373 to Respondent for the annual registration fee for Tank No. 7, with an amount due of seventy-five dollars (\$75.00). Respondent failed to make payment in a timely manner, and late charges of five dollars (\$5.00) accrued.

25. As of this date, Respondent failed to pay the invoice or the late fee. The total amount due and owing for invoice TKS-150373 is eighty dollars (\$80.00). Failure to pay the annual tank



registration fee and late fee violates APC&EC Rule No. 12.203(A)(1) and Ark. Code Ann. § 8-7-806(a)(1).

26. On May 10, 2021, DEQ issued invoice TKS-155197 to Respondent for the annual registration fee for Tank No. 7, with an amount due of seventy-five dollars (\$75.00). Respondent failed to make payment in a timely manner, and late charges of five dollars (\$5.00) accrued.

27. As of this date, Respondent failed to pay the invoice or the late fee. The total amount due and owing for invoice TKS-155197 is eighty dollars (\$80.00). Failure to pay the annual tank registration fee and late fee violates APC&EC Rule No. 12.203(A)(1) and Ark. Code Ann. § 8-7-806(a)(1).

28. On May 10, 2022, DEQ issued invoice TKS-160039 to Respondent for the annual registration fee for Tank No. 7, with an amount due of seventy-five dollars (\$75.00). Respondent failed to make payment in a timely manner, and late charges of five dollars (\$5.00) accrued.

29. As of this date, Respondent failed to pay the invoice or the late fee. The total amount due and owing for invoice TKS-160039 is eighty dollars (\$80.00). Failure to pay the annual tank registration fee and late fee violates APC&EC Rule No. 12.203(A)(1) and Ark. Code Ann. § 8-7-806(a)(1).

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall immediately begin the process of putting Tank No. 7 into temporary closure in accordance with Subpart G of 40 CFR § 280.70.
2. Within sixty (60) calendar days of the effective date of this CAO, Respondent shall submit documentation indicating that the cathodic protection system provided for Tank No. 7 has been tested for proper operation.



3. Within sixty (60) calendar days of the effective date of this CAO, Respondent shall designate a Class A and Class B operator for Tank No. 7.

4. Within thirty (30) calendar days of the effective date of this CAO, Respondent shall Pay the annual and late fees associated with invoices TKS-120043, TKS-125132, TKS-135475, TKS-140484, TKS-145401, TKS-150373, TKS-155197, TKS160039 and TKS-165035. The total amount of Seven Hundred Twenty Dollars (\$720.00) shall be made payable to the Division of Environmental Quality and mailed to:

Division of Environmental Quality
Fiscal Division
5301 Northshore Drive
North Little Rock, AR 72118

5. All documents required by this CAO to be submitted to DEQ, excluding the penalty payment required by Paragraph 6 below, shall be emailed to Enforcement, Office of Land Resources, at olrenforcement@adeq.state.ar.us, or submitted by Certified Mail or hand-delivered to Enforcement, Office of Land Resources, DEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317.

6. In compromise and full settlement for instances of noncompliance specified in the Findings of Fact, Respondent agrees to pay the sum of Six Thousand three Hundred Fifty Dollars (\$6,350.00), or one-half of the full civil penalty being Three Thousand One Hundred Seventy Five Dollars (\$3,175.00) if this CAO is signed and returned to the Office of Land Resources, Enforcement Branch, DEQ, 5301 Northshore Drive, North Little Rock, Arkansas, 72118-5317, within twenty (20) calendar days of receipt of this CAO. Payment of the penalty shall be made in Five (5) monthly installments of Six Hundred Thirty-five Dollars (\$635.00). The first payment



shall be due within sixty (60) days of the effective date of this Order, made payable to the Arkansas Division of Environmental Quality, and mailed to:

Division of Environmental Quality
Fiscal Division
5301 Northshore Drive
North Little Rock, AR 72118

In the event that Respondent fails to pay the civil penalties within the prescribed time, DEQ shall be entitled to attorneys' fees and costs associated with collection as well as all other lawful fees and penalties.

7. All requirements of this CAO are subject to approval by DEQ. In the event of any deficiencies, Respondent shall submit any additional information or changes requested, or take additional actions specified by DEQ to correct any such deficiencies within the timeframe specified by DEQ. Failure to respond adequately in writing within the timeframe specified by DEQ constitutes a failure to meet the requirements established by this CAO.

8. If Respondent fails to meet any requirement of this CAO within the deadline established by the CAO, DEQ may assess stipulated penalties for the delay in the following amounts:

- a. First day through the fourteenth day: \$100.00 per day
- b. Fifteenth day through the thirtieth day: \$500.00 per day
- c. Each day beyond the thirtieth day: \$1,000.00 per day

These stipulated penalties for delay in performance shall be in addition to any other remedies or sanctions which may be available to DEQ by reason of Respondent's failure to comply with this CAO.

9. Respondent shall notify DEQ in writing 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 delay, the precise cause of delay, and the measures being taken to correct and minimize the delay.

10. 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 the DEQ promptly, as provided in the preceding paragraph of this Section, shall be grounds for a denial of an extension.

11. Nothing contained in this CAO shall be construed as a waiver by DEQ of its authority over alleged violations not specifically addressed herein. This CAO does not purport in any way to relieve Respondent of its responsibilities for obtaining any necessary permits or licenses, nor does it relieve Respondent of any other obligations imposed by any local, state, or federal laws. This CAO does not exonerate any past, present, or future conduct not expressly addressed herein.

12. This CAO is subject to public review and comment in accordance with APC&EC Rule No. 8 and shall not be effective until thirty (30) calendar days after public notice is given. DEQ retains the right to rescind this CAO based upon the comments received within the thirty-day public comment period.


13. Notwithstanding the public notice requirements, the corrective actions necessary to achieve compliance shall be taken immediately. The publication of this CAO shall occur on or about the 10th or 25th day of the month following the date this CAO is executed. As provided by APC&EC

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Rule No. 8, this matter is subject to being reopened upon APC&EC initiative or in the event a petition to set aside this CAO is granted by the APC&EC.

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

So Ordered This 24th Day of MAY, 2024.


Caleb J. Osborne, Division of Environmental Quality, Director,
Chief Administrator, Environment
Arkansas Department of Energy and Environment

Approved as to Form and Content:

Allowey Ahmed, Individual

BY:

Signature 

Print Name ALLOWEY AHMED

Title OWNER

Date 5/18/2024