

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

AFIN: 60-04783

LIS No. 17-044

ALA SAYYAHEEN
1511 WEATHERBORNE DRIVE
LITTLE ROCK, AR 72211

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.*, the Removal of Asbestos Material Act, Ark. Code Ann. § 20-27-1001 *et seq.*, Arkansas Pollution Control and Ecology Commission (APC&EC) Regulation 7, APC&EC Regulation 8, and APC&EC Regulation 21.

The issues herein having been settled by agreement of Ala Sayyaheen (Respondent) and the Director of the Arkansas Department of Environmental Quality (ADEQ), it is hereby agreed and stipulated that the following FINDINGS OF FACT and ORDER AND AGREEMENT be entered.

FINDINGS OF FACT

1. On or before September 9, 2016, Respondent demolished or caused to be demolished the former Ryan's Cafeteria/No. 1 Chinese Buffet restaurant (facility), formerly located at 8815 Baseline Road, Little Rock, Pulaski County, AR 72209 (the Site).
2. Ark. Code Ann. § 20-27-1007(2) and (4) provides:
It shall be unlawful for any person:

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...

(2) To participate in any response action, demolition, or renovation contrary to the regulations or orders issued under this subchapter or contrary to the Arkansas Water and Air Pollution Control Act § 8-4-101 *et seq.*, and the Arkansas Solid Waste Management Act § 8-6-201 *et seq.*, and the regulations promulgated thereunder, whether or not such person is required to have a license or certificate pursuant to this subchapter;

...

(4) To violate any provision of this subchapter or any regulation or order adopted or issued under this subchapter.

3. Ark. Code Ann. § 8-4-103(c)(1) as referenced by Ark. Code Ann. §20-27-1002(a) authorizes ADEQ to assess an administrative civil penalty not to exceed ten thousand dollars (\$10,000) per violation for any violation of any provision of the Act and any regulation or permit issued pursuant to the Act.

4. Pursuant to Ark. Code Ann. § 8-4-103(c)(1)(B) as referenced by Ark. Code Ann. § 20-27-1002(a), "Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment."

5. The structure in question constitutes a "facility" as defined in APC&EC Regulation 21, § 4.

6. Respondent meets the definition of an "owner or operator of a demolition or renovation activity" as defined in APC&EC Regulation 21, § 4.

7. On September 8, 2016, ADEQ received a complaint that demolition had begun on the facility located at the Site. On September 9, 2016, ADEQ personnel conducted an investigation of the Site. The investigation revealed that Respondent failed to conduct or have conducted a thorough asbestos inspection of the affected facility prior to demolition. Such failure violates APC&EC Reg.21.501, and therefore violates Ark. Code Ann. § 20-27-1007(4).

8. The investigation revealed that Respondent failed to submit a written Notice of Intent (NOI) and the associated fee to ADEQ at least ten (10) working days prior to commencing

the demolition activity. As noted in Paragraph 7 of the FINDINGS OF FACT, no asbestos inspection was conducted prior to the demolition activity. Therefore, the appropriate fee amount could not be calculated. Such failure violates APC&EC Reg.21.601, and therefore violates Ark. Code Ann. § 20-27-1007(4).

9. ADEQ informed Respondent of the compliance issues identified during the September 9, 2016, complaint investigation of the affected facility in correspondence dated September 21, 2016. This letter was intended to provide Respondent with an opportunity to review the violations and submit information Respondent deemed appropriate regarding the compliance issues.

10. On September 14, 2016, ADEQ received Respondent's NOI for the demolition of the facility. The NOI stated that demolition of the facility began on August 22, 2016, and was completed on September 16, 2016.

11. The NOI was accompanied by a copy of a receipt for the disposal of demolition material taken from the Site. The receipt indicated that twenty-five (25) loads of demolition material weighing 101.96 tons was delivered to a Class 4 landfill located in Pulaski County, Arkansas during August and September 2016.

ORDER AND AGREEMENT

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

1. This CAO addresses all violations set forth 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 SIX HUNDRED FIFTY DOLLARS (\$1,650.00)**, or one-half of the penalty, **EIGHT HUNDRED TWENTY-**

FIVE DOLLARS (\$825.00) if this CAO is signed and returned to Air Enforcement Section, ADEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317, prior to 4:00 p.m. on **June 20, 2017**. Payment is due within thirty (30) calendar days of the effective date of this CAO. Such payment shall be made payable to:

ADEQ, 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 associated with collection.

3. All applicable submissions required by this CAO are subject to approval by ADEQ. In the event of any deficiency, Respondent shall, within fifteen (15) calendar days of notification by ADEQ, submit any additional information requested. Failure to adequately respond 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 said CAO. If Respondent fails to meet any limits, requirements, or deadlines, Respondent consents and agrees to pay, on demand, to ADEQ 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 ADEQ'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 which may be available to ADEQ by reason of Respondent's failure to comply with the requirements of this

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CAO. ADEQ 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 ADEQ 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. ADEQ 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 ADEQ 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. ADEQ retains the right and discretion to rescind this CAO based on comments received within the thirty-day public comment period.

8. As provided by APC&EC Regulation Number 8, this matter is subject to being

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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.

10. Nothing in this CAO shall be construed as a waiver by ADEQ of its enforcement authority over alleged violations not specifically addressed herein. In addition, this CAO does not exonerate Respondent from any past, present, or future conduct which is not expressly addressed herein, nor does it relieve Respondent of the responsibilities for obtaining any necessary permits.

SO ORDERED THIS 7th DAY OF June, 2017.

Becky W. Keogh
BECKY W. KEOGH, DIRECTOR

ARKANSAS DEPARTMENT OF
ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

ALA SAYYAHEEN

BY: [Signature] (Signature)

ALA SAYYAHEEN (Typed or printed name)

TITLE: owner

DATE: 6/7/17

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