

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

CITY OF MORRILTON
CLASS 1 LANDFILL
51 DUMP ROAD
MORRILTON, ARKANSAS 72110

AFIN 15-00034
PERMIT 0257-S1-R1

LIS 18- 068

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (CAO) is issued pursuant to the authority of Ark. Code Ann. § 8-6-201, *et seq.*, Ark. Code Ann. § 8-4-101, *et seq.* and Arkansas Pollution Control and Ecology Commission (APC&EC) Regulation No. 22, Solid Waste Management Rules. The issues herein having been settled by agreement of the City of Morrilton (“Respondent”) and the Director of the Arkansas Department of Environmental Quality (ADEQ or “Department”), it is hereby agreed and stipulated by all parties that the following Findings of Fact and Order and Agreement be entered.

FINDINGS OF FACT

1. Respondent owns and operates a Class 1 Landfill (ADEQ Permit 0257-S1-R1) at 51 Dump Road, Morrilton, Conway County, Arkansas (“the Facility”).
2. Pursuant to Ark. Code Ann. § 8-6-207 (a)(1), ADEQ is authorized “to administer and enforce all laws, rules, and regulations related to solid waste disposal.”
3. Ark. Code Ann. § 8-6-205 (a)(1) provides the following:
 - (a) It shall be illegal for any person:

- (1) To violate any provision of this subchapter or any rule, regulation, or order of the Arkansas Pollution Control and Ecology Commission issued pursuant to this subchapter or of a permit issued under this subchapter by the Arkansas Department of Environmental Quality.”

4. On September 19, 2016, a Department inspector conducted a quarterly inspection of the Facility.

During this inspection, the inspector observed the following violations of APC&EC Reg. 22:

- a. **The following equipment at the landfill had not been routinely maintained and was in need of repairs at the time of the inspection: a compactor, two (2) dozers, and a dirt hauler. Additionally, the Facility did not have adequate backup equipment.** Failure to have provisions for the maintenance of equipment at the landfill and to have adequate backup equipment in the event of breakdowns is a violation of APC&EC Reg. 22.411(j) and, therefore, is a violation of Ark. Code Ann. § 8-6-205(a)(1). APC&EC Reg. 22.411(j) states: “Equipment Requirements – The owner or operator shall have provisions for the routine maintenance of equipment at the landfill. Adequate backup equipment shall be available within 24 hours in the event of breakdowns.”
- b. **The active working face was not confined to the smallest practical area.** Failure to confine dumping to the smallest practical area is a violation of APC&EC Reg. 22.411(c) and, therefore, is a violation of Ark. Code Ann. § 8-6-205(a)(1). APC&EC Reg. 22.411(c) states: “Working Face Size – Unloading shall be supervised and dumping shall be confined to the smallest practical area. Multiple working faces will not be allowed unless specifically approved in the facility operating plan.”
- c. **The Facility did not have any surface water controls to control erosion on the west, east, and north slopes of the landfill. Additionally, erosion rills and cuts were observed in several areas throughout the landfill.** Failure to have surface water controls to control erosion on the steep slopes of the landfill is a violation of APC&EC Reg. 22.427(d), and, therefore, is a violation of Ark. Code Ann. § 8-6-205(a)(1). APC&EC Reg. 22.427(d) states: “Erosion Control – The design shall also include berms, swales, benches, downchutes and other measures as appropriate on steep slopes to minimize erosion. In areas where flow quantity and velocity warrant, rip rap, gabions, revetments, or other protection shall be provided.”
- d. **The south slope of Cell 3 was not contoured to drain surface water. Consequently, surface water was standing on the south end of Cell 3 near the active portion of the**

landfill. This condition is a violation of APC&EC Reg. 22.411(h)(1), and, therefore, is a violation of Ark. Code Ann. § 8-6-205(a)(1). APC&EC Reg. 22.411(h)(1) states: “Additional Surface Water Controls and Best Management Practices – In conjunction with and in addition to the requirements of APC&EC Reg. 22.418, Reg. 22.419, Reg. 22.427, and Reg. 22.430, the owner or operator shall: (1) Contour the surface of the working portion of the landfill to minimize surface water run-on or flow into or through the working face.”

- e. **The Facility did not have adequate vegetation on the north slope of Cell 3, the east slope of Cell 5, and the west slope of Cell 1.** This condition is a violation of APC&EC Reg. 22.427(f), and, therefore, is a violation of Ark. Code Ann. § 8-6-205(a)(1). APC&EC Reg. 22.427(f) states: “Final and Interim Slope Stabilization – The operating narrative shall describe seeding and soil stabilization methods on both interim and final slopes. In general, exposed slopes shall be seeded or stabilized if it is anticipated that these slopes will not be disturbed for more than one growing season. More frequent seeding or stabilization may be required to prevent erosion of the cover system. The narrative shall also describe vegetative maintenance procedures and shall provide that vegetation shall be maintained in such a manner that vigorous growth is achieved.” This same violation was also recorded on the previous quarter’s inspection report dated May 18, 2016.
- f. **Erosion with exposed waste was observed on the north slope of Cell 3, the east slope of Cell 5, and the west slope of Cell 1. Additionally, leachate leaks were observed on the north slope of Cell 4 and the west slope of Cell 1.** Failure to maintain cover system integrity and repair erosion and defects resulting in exposed refuse and leachate leaks or seepage is a violation of APC&EC Reg. 22.411(o), and, therefore, is a violation of Ark. Code Ann. § 8-6-205(a)(1). APC&EC Reg. 22.411(o) states: “Cover Maintenance – The owner or operator shall be responsible for maintaining the cover system integrity and shall promptly repair erosion, washout, tracking, or other defects that result in exposed refuse in either daily or intermediate cover, or exposure of the barrier system of the final cover. Areas of leachate seepage, or areas exhibiting evidence of leachate seepage such as staining and discoloration of the cover system shall also be promptly repaired.” This same violation was also recorded on the previous two (2) quarterly inspection reports dated March 16, 2016 and May 18, 2016.
- g. **Leachate was discharging from the north slope of Cell 4 into a storm water ditch.** This unpermitted discharge is a violation of APC&EC Reg. 22.419(a)(5), and, therefore, is a violation of Ark. Code Ann. § 8-6-205(a)(1). APC&EC Reg. 22.419(a)(5) states:

“General Requirements – As provided in 40 CFR 258.27 all Class 1 Landfills shall not:
(5) Allow the discharge of leachate from the landfill units unless the discharge is permitted under the NPDES system.”

5. On August 7, 2017, FTN Associates, Ltd., a consultant, submitted a letter to ADEQ on behalf of the City of Morrilton to address the violations noted during the September 19, 2016 inspection. In this letter, FTN indicated that corrective actions are ongoing at the Site. FTN also submitted a proposed Corrective Action Plan (CAP) and implementation schedule outlining the activities to be performed to correct the violations noted during September 19, 2016 inspection.

ORDER AND AGREEMENT

Wherefore, Respondent and ADEQ do hereby stipulate and agree:

1. Within ten (10) calendar days of the effective date of this CAO, Respondent shall submit documentation that all non-operational equipment at the landfill has been repaired and is fully operational. Specifically, this documentation shall ensure that the compactor, the two dozers, and the dirt hauler have been repaired or replaced. Respondent also shall ensure that provisions are in place so that adequate backup equipment is available within twenty-four (24) hours of any equipment failure. Respondent shall submit documents of these provisions as well to ADEQ.
2. Respondent shall immediately undertake measures to ensure that the active working face of the landfill is confined to the smallest practical area.
3. Within thirty (30) calendar days of the effective date of this CAO, Respondent shall submit documentation that surface water controls have been constructed in order to minimize and control erosion on steep slopes at the landfill.

4. Within thirty (30) calendar days of the effective date of this CAO, Respondent shall submit documentation that the surface of the landfill has been properly contoured in order to alleviate the ponding of surface water referenced in Findings of Fact, Paragraph 2.d.
5. Within thirty (30) calendar days of the effective date of this CAO, Respondent shall submit documentation that seeding and soil stabilization have been completed in order to minimize and prevent erosion of the cover system for the slopes referenced in Findings of Fact, Paragraph 2.e.
6. Within thirty (30) calendar days of the effective date of this CAO, Respondent shall submit documentation that all defects in the cover system have been repaired and that the cover system is being properly maintained. Respondent shall also repair areas of leachate seepage or areas exhibiting evidence of leachate seepage.
7. Respondent shall take immediate measures to cease any and all leachate discharges from the landfill. Within ten (10) calendar days of the effective date of this CAO, Respondent shall submit documentation of run-on and run-off control systems designed, constructed, and operated as necessary to comply with this requirement.
8. All documents required by this CAO to be submitted to ADEQ, excluding the penalty payment required by the Order and Agreement Paragraph 9 below, shall be electronically emailed to Scott McDonald, Enforcement, Office of Land Resources, at mcdonald@adeq.state.ar.us, and the originals submitted by Certified Mail or hand delivered to Scott McDonald, Office of Land Resources, ADEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317.
9. In compromise and full settlement of the noncompliance specified in this CAO, Respondent agrees to pay a civil penalty of TEN THOUSAND DOLLARS (\$10,000.00) of which EIGHT THOUSAND DOLLARS (\$8,000.00) may be used for one or more SUPPLEMENTAL

ENVIRONMENTAL PROJECTS (SEPs) to be approved by the Director as provided for in Paragraph 10 of the Order and Agreement.

10. As part of the administrative civil penalty as set forth in Paragraph 9 of this Order, Respondent may fund one (1) or more SEP(s) totaling EIGHT THOUSAND DOLLARS (\$8,000.00) if Respondent submits a written SEP proposal and such proposal is approved by the Director in writing. Respondent has thirty (30) calendar days from the effective date of this CAO to obtain written approval from the Director for any SEP(s) proposal(s). Respondent shall complete any approved SEP(s) within one hundred eighty (180) calendar days from the date of ADEQ's SEP approval letter, unless an extension is granted by the Director prior to the expiration of the due date. Respondent shall be obliged to pay the difference to ADEQ as a civil penalty of TEN THOUSAND DOLLARS (\$10,000.00) if:

- a. Respondent fails to obtain approval of a SEP(s) from the Director;
- b. Respondent fails to complete the SEP(s) within the approved time frame;
- c. Respondent fails to complete any approved SEP(s) in the manner prescribed by the Director;
- d. ADEQ discovers or determines that Respondent was required by any federal, state, or local obligation, rule, law, regulation, or statute to perform the SEP(s); or
- e. Expenditures by Respondent in completing the SEP(s) are less than the amount required by the SEP(s).

If a SEP(s) is approved, the total amount of the monetary penalty of TWO THOUSAND DOLLARS (\$2,000) shall be due within thirty (30) calendar days of the approval of the SEP(s).

In addition, upon completion of the SEP(s), Respondent shall submit to ADEQ copies of all

documents verifying payment and full implementation of the approved SEP(s). If expenditures by Respondent in completing the SEP(s) are less than EIGHT THOUSAND DOLLARS (\$8,000.00), Respondent shall pay the remaining balance as a civil penalty. Penalty payment shall be made payable to the Arkansas Department of Environmental Quality and mailed to the attention of Fiscal Division, ADEQ, 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.

11. Respondent shall notify ADEQ 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 the delay, the precise cause of the delay, and the measures being taken to correct and minimize the delay.

12. ADEQ may grant an extension of any provision of this CAO provided that the delay has been or will be caused by circumstances beyond the control of, and without the fault of, Respondent. The burden of proving such cause of delay rests with Respondent. Any extension shall be in the form of an Amendment to this CAO and shall be mutually agreed upon by both ADEQ and Respondent. Respondent's failure to meet the burden of proof regarding cause of delay or its failure to notify ADEQ of any delay within the timeframes specified in this CAO shall result in the denial of an extension.

13. Respondent consents and agrees to pay, on demand, to ADEQ civil penalties according to the following schedule, as authorized by the Arkansas Solid Waste Management Act and APC&EC Reg. 22, for failure to meet any deadlines required by this CAO as follows:

(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 ADEQ by reason of Respondent's failure to comply with this CAO.

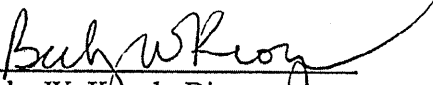
14. Nothing contained in this CAO shall be construed as a waiver by ADEQ of its authority over alleged violations not specifically addressed herein. This CAO does not purport in any way to relieve Respondent of its responsibilities for obtaining any necessary permits or licenses, nor does it relieve 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.
15. This CAO is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d) and the Arkansas Pollution Control and Ecology Commission Regulation 8, and is therefore 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 or based on any other considerations that may subsequently come to light. Notwithstanding the public notice requirements, the corrective actions necessary to achieve compliance shall be initiated by Respondent within the stated time frames. As provided by APC&EC Regulation No. 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.

16. This CAO has been reviewed and approved by the City Council of Respondent in a duly convened meeting with a quorum present. A copy of an approved Resolution or the Minutes of the ~~Quorum Court Meeting~~ ^{City Council at} is attached as Exhibit A.

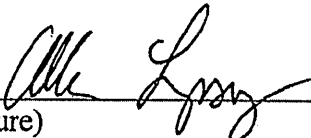
17. The City Council of Respondent has authorized the Mayor and City Clerk/Treasurer to sign this CAO on behalf of Respondent. See Exhibit A.

18. The City Council has authorized the Mayor and City Clerk/Treasurer to expend funds for compliance activities required by this CAO including, but not limited to, the payment of a civil penalty and the completion of a SEP in the total combined amount of TEN THOUSAND DOLLARS (\$10,000.00). See Exhibit A.

SO ORDERED THIS 24 day of July, 2018.


Becky W. Keogh, Director
Arkansas Department of Environmental Quality

APPROVED AS TO FORM AND CONTENT:

BY 
(Signature)

Allen Lipsmeier
(Printed Name)

TITLE Mayor
(Printed Title)

DATE 7-10-18