

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

**CLEAN HARBORS EL DORADO, LLC
309 AMERICAN CIRCLE
EL DORADO, ARKANSAS 71730**

**EPA ID No. ARD069748192
PERMIT NO. 10H-RN1
AFIN 70-00098**

LIS 19- 048

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (CAO or "Order") is issued pursuant to the authority of the Arkansas Hazardous Waste Management Act of 1979, Ark. Code Ann. § 8-7-201 *et seq.*, the Arkansas Remedial Action Trust Fund Act, Ark. Code Ann. § 8-7-501 *et seq.*, Arkansas Pollution Control and Ecology Commission (APC&EC) Regulation No. 23, APC&EC Regulation No. 8, and APC&EC Regulation No. 7. The issues herein having been settled by the agreement of Clean Harbors El Dorado, LLC ("Respondent") and the Arkansas Department of Environmental Quality (ADEQ), 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's facility is located at 309 American Circle, El Dorado, Union County, Arkansas ("the Site").
2. Respondent owns and operates a commercial incinerator designed to treat hazardous and non-hazardous waste to meet all applicable standards for off-site landfill disposal. Respondent utilizes numerous permitted units to store and treat waste before and after incineration. These units include tank storage, tank treatment, container storage, various shredders, and other mechanical processing equipment.
3. ADEQ issued RCRA Permit 10H-RN2 to Respondent on June 26, 2018.

4. Respondent also is a Large Quantity Generator of Hazardous Waste.
5. Ark. Code Ann. § 8-7-204(c) provides that each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment and authorizes ADEQ to assess an administrative civil penalty not to exceed twenty-five thousand dollars (\$25,000) per day for violations of any provision of the Arkansas Hazardous Waste Management Act of 1979 (“the Act”) and any regulation or permit issued pursuant to the Act.
6. Ark. Code Ann. § 8-7-205(1) states, “It shall be unlawful for any person to ... [v]iolate any provisions of this subchapter or of any rule, regulation, permit, or order adopted or issued under this subchapter....”
7. On May 7 through May 10, 2018, ADEQ conducted a Compliance Evaluation Inspection (CEI) at the Site. On August 10, 2018, ADEQ mailed the CEI report to Respondent.
8. Based on the findings of the May 7 through May 10, 2018 CEI, ADEQ identified the following APC&EC Regulation 23 violations:
 - a. During the CEI, ADEQ observed Respondent was continuously pumping compressor wastewater into the secondary containment of Tank 144TNK587. Allowing wastewater to collect and remain in the secondary containment longer than twenty-four (24) hours, preventing the detection of any release of hazardous waste into the secondary containment system, is a violation of APC&EC Regulation No. 23 § 265.193(c)(3), which states in part, “. . . [S]econdary containment systems must be . . . [p]rovided with a leak detection system that is designed and operated so that it will detect the failure of either the primary and secondary containment structure or any release of hazardous

waste or accumulated liquid in the secondary containment system within 24 hours.” This also violates Ark. Code Ann. § 8-7-205(1).

- b. On June 14, 2018, daily inspection logs for the months of April and May 2018 were requested from Respondent to include any additional information associated with a “Fail” status for hazardous waste generator tank 144TNK587. On June 18, 2018, Respondent provided to ADEQ inspection logs and El Dorado Landlord Forms for hazardous waste generator Tank 144TNK587. The El Dorado Landlord Forms indicated that on May 4, 2018, and May 9, 2018, hazardous waste was held in secondary containment. On May 18, 2018, the El Dorado Landlord Form indicated that Tank 144TNK587 received a “Pass” for this inspection. However, according to Respondent, the secondary containment was not pumped out until May 21, 2018, which would have required the inspection of the secondary containment to receive a “Fail” status for the May 18, 2018 inspection. Therefore, Respondent failed to properly conduct and document inspections of these containment systems. This is a violation of APC&EC Regulation No. 23 Section 265.195(b)(3), which states in part, “[T]he owner or operator must inspect at least once each operating day ... [t]he construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system to detect erosion or signs of releases of hazardous waste”. This also violates Ark. Code Ann. § 8-7-205(1).
9. In a letter dated September 13, 2018, Respondent stated that the compressor wastewater line had been relocated directly into Tank 144TNK587 from the air compressor system. Respondent submitted documentation that the pipe, which

previously went into the secondary containment, had been replaced with a small pipe leading from the air compressor directly into Tank 144TNK587.

10. On September 25, 2018, ADEQ on-site inspector observed pitting and cracking of the secondary containment of Tank 144TNK587. Therefore, APC&EC Regulation No. 23 Section 265.195(b)(3) has not been corrected.

ORDER AND AGREEMENT

WHEREFORE, Respondent and the ADEQ do hereby stipulate and agree:

1. Without admitting or denying the truth or falsity of any of the above allegations or issues currently in dispute, ADEQ and the Respondent wish to avoid the uncertainty of litigation and settle and resolve their differences by entering into this CAO.
2. Upon the effective date of this CAO, Respondent shall submit documentation to ADEQ that the secondary containment system of Tank 144TNK587 is free of pitting and cracking.
3. Respondent shall submit to ADEQ one (1) electronic and one (1) hard copy of all reports, documents, plans or specifications required under the terms of this Order.
4. All submittals required by the Order, excluding the requirement for the payment submittal in paragraph 5 below, shall be electronically emailed to OLRenforcement@adeq.state.ar.us, and submitted by Certified Mail or hand delivered to Gina Porter, Enforcement, Office of Land Resources, ADEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317.
5. All submittals shall be subject to applicable review fees pursuant to APC&EC Regulation No. 23 § 6(t).
6. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of EIGHT THOUSAND DOLLARS

(\$8,000.00). Respondent may fund a Supplemental Environmental Project (SEP) to offset up to TWO THOUSAND EIGHT HUNDRED DOLLARS (\$2,800.00) of this civil penalty. If a SEP is approved in accordance with Paragraph 6 of this Order and Agreement, the amount of the civil penalty, less the amount of the approved SEP, shall be due within thirty (30) calendar days of the effective date of this CAO. 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.

7. Upon the effective date of this CAO, Respondent agrees to submit a proposal for a SEP, including an implementation and completion schedule. Upon approval of the SEP by the Director of ADEQ, Respondent shall complete the SEP in accordance with the terms of ADEQ's approval. Upon completion of the SEP, the approved cost of the SEP shall be credited against the civil penalty, not to exceed the reduction of TWO THOUSAND EIGHT HUNDRED DOLLARS (\$2,800.00). If Respondent fails to submit a proposal acceptable to ADEQ within the specified time frame, the full penalty of EIGHT THOUSAND DOLLARS (\$8,000.00) shall be due within thirty (30) calendar days of the effective date of this CAO. Respondent must adhere to the implementation and completion schedule approved by ADEQ but may request, in writing, an extension of deadlines in accordance with Paragraphs 9 and 10 of this Order and Agreement. If Respondent fails to adhere to the implementation and completion schedule without receiving an extension from the Director of ADEQ, any unpaid remainder of the EIGHT THOUSAND DOLLARS (\$8,000.00) penalty shall be due to ADEQ within thirty (30) calendar days of receiving written notification by

ADEQ. If Respondent completes a SEP less than the approved cost, any remaining penalty amount, up to the full penalty of EIGHT THOUSAND DOLLARS (\$8,000.00) shall be due within thirty (30) calendar days of receiving written notification from ADEQ.

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

9. If Respondent fails to submit to ADEQ any reports or plans, or meet any other requirement of this Order within the applicable deadline established in the Order, ADEQ may assess stipulated penalties for delay in the following amounts:

- a. First day through the fourteenth day: \$250 per day
- b. Fifteenth day through the thirtieth day: \$1,250 per day
- c. Each day beyond the thirtieth day: \$2,500 per day

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 Order.

10. Respondent shall notify ADEQ 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. Such notification or request for extension shall be made in writing and prior to the deadline.

11. ADEQ may grant a written extension of any provision of this Order, provided that Respondent requested such an extension in writing and provided that the delay or anticipated delay has been 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 fault of Respondent and the length of delay attributable to such circumstances shall rest with Respondent.
12. Nothing contained in this Order shall be construed as a waiver of ADEQ's enforcement authority over violations not specifically addressed herein, nor does this Order exonerate past, present, or future conduct which is not expressly addressed herein. Nothing contained herein shall relieve Respondent of any other obligations imposed by any local, state, or federal laws, nor shall this Order be deemed in any way to relieve Respondent of its responsibilities for obtaining or complying with any necessary permits or licenses. This Order is subject to public review and comments in accordance with Ark. Code Ann. § 8-4-103(d) and is therefore not effective until thirty (30) calendar days after public notice of the Order is given. ADEQ retains the right and discretion to rescind this Order based on comments received within the thirty-day public comment period or based on any other considerations which may subsequently come to light. Additionally, this Order is subject to being reopened upon APC&EC initiative or in the event a petition to set aside this Order is granted by the Commission.

13. By virtue of the signature appearing below, the individual represents that he or she is a Managing Member of Respondent, being duly authorized to execute and bind Respondent to the terms contained herein. Execution of this Order by an individual other than a Managing Member of Respondent shall be accompanied by a resolution granting signature authority to said individual as duly ratified by the governing body of the entity.

SO ORDERED THIS 17 DAY OF MAY 2019.

Becky W Keogh

BECKY W. KEOGH
DIRECTOR
ARKANSAS DEPARTMENT OF
ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

CLEAN HARBORS EL DORADO, LLC

BY: Signature [Signature]
Print or Type Name Michael Christensen
Title VP Environmental Compliance
Date 5/6/19