

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

IN THE MATTER OF:

AFIN: 58-00889

LIS No. 20-158

KIRBY SPECIALTIES CORPORATION
2401 EAST 16th STREET
RUSSELLVILLE, AR 72802

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 Kirby Specialties Corporation (Respondent) and the Director of the Division of Environmental Quality¹ (DEQ), 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 October 23 2019, Respondent demolished or caused to be demolished a structure formerly located at 1705 Highway 9B, Pope County, Arkansas 72110 (the Site). The Site is located across the street from the UAMS Kids First Childcare Center at 411

¹ Pursuant to Act 910 of 2019, the Arkansas Transformation and Efficiencies Act, the former Arkansas Department of Environmental Quality is now the Division of Environmental Quality in the newly created Arkansas Department of Energy and Environment.

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Lentz Dr., Morrilton, AR 72110.

2. Ark. Code Ann. § 20-27-1007(2) and (4) provides:

It shall be unlawful for any person:

...

(2) To participate in any response action, demolition, or renovation contrary to the rules 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 rules 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 rule or order adopted or issued under this subchapter.

3. 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.”

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(s) in question constitutes a “facility” as defined in APC&EC Regulation 21, Chapter 4.

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

7. ADC&EC Reg.21.501 requires Respondent of a demolition, renovation, or response action to conduct, or have conducted, a thorough inspection, as defined in APC&EC Regulation 21, Chapter 4, of the affected facility or part of the facility for the presence of asbestos including category I and category II nonfriable asbestos prior to the commencement of

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the demolition, renovation, or response action.

8. A thorough inspection, as defined in APC&EC Regulation 21, Chapter 4, means an inspection which: (a) is written; (b) describes the current state of the facility, or portion of the facility if the inspection did not encompass the entire facility, and the building materials therein; (c) includes all suspect and accessible building materials; (d) identifies if the inspection encompasses the entire facility or a portion thereof; (e) includes an assessment of the condition of the asbestos-containing material; and (f) uses documented sampling methodology.

9. ADC&EC Reg.21.503 requires that a person conducting an inspection for asbestos containing material in a facility must be trained, certified as an Inspector, and meet all other requirements of APC&EC Regulation 21.

10. ADC&EC Reg.21.601 requires that the owner or operator submit a written Notice of Intent (NOI) to the Department by either hand delivery, post-marked by U.S. Postal Service, or post-marked by a commercial delivery serviced at least the (10) working days before any demolition activity begins. Such notice must be accompanied by the required fee which is described in Chapter 22 of APC&EC Regulation 21.

11. On October 23, 2019, DEQ personnel conducted a complaint investigation into alleged demolition activities at the Site. The investigation revealed that a structure had been demolished and that the demolition waste material had already been removed from the Site.

12. In a letter dated November 20, 2019, DEQ informed Respondent of the compliance issues identified during the October 23, 2019 complaint investigation of the Site. This was intended to provide Respondent with the opportunity to review the violations identified and submit any additional information Respondent deemed appropriate regarding the compliance issues.

13. In correspondence dated November 27, 2019, Respondent stated that Kirby Specialties Corporation's owner, Danny Kirby, and Cogswell Motors' property manager, Scott Steuber, performed a thorough walkthrough of the Site to identify potential hazards that would affect the demolition. According to Respondent, no materials containing asbestos were discovered during this walkthrough. However, Respondent failed to provide DEQ with a written inspection report that would have had to contain the elements of a thorough inspection. Such failure violates APC&EC Reg.21.501, and therefore violates Ark. Code Ann. § 20-27-1007(4).

14. Respondent acknowledged that it had failed to submit a written NOI and appropriate NOI fee to DEQ prior to the demolition of the structure at the Site. Such failure violates APC&EC Reg.21.601, and therefore violates Ark. Code Ann. § 20-27-1007(4).

15. A review of DEQ's Asbestos Individual Licenses/Certifications Data base revealed that Respondent's Danny Kirby and Scott Steuber are not licensed and or certified to conduct an inspection of a facility for asbestos containing material. Thus, Respondent, as noted in its November 27, 2019 letter, conducted an inspection for the presence of asbestos, without the required licensing and or certification. Such failure violates APC&EC Reg.21.503, and therefore violates Ark. Code Ann. § 20-27-1007(4).

16. In correspondence dated January 6, 2020, DEQ informed Respondent that a formal enforcement action is proceeding for the compliance issues discovered during the October 23, 2019 complaint investigation.

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. This CAO addresses all violations contained in the FINDINGS OF FACT.

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2. In compromise and full settlement for instances of noncompliance specified in the FINDINGS OF FACT, Respondent agrees to pay the sum of **SIX THOUSAND FIVE HUNDRED DOLLARS (\$6,500.00)**. Payment is due within thirty (30) calendar days of the effective date of this CAO. Such payment 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.

3. 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.

4. 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

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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.

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 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.

6. 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.

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. DEQ retains the right and discretion to rescind this CAO based on comments received within the thirty (30) day public comment period.

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

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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 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 does it relieve Respondent of the responsibilities for obtaining any necessary permits.

11. 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 CAO by an individual other than a Managing Member of Respondent shall be accompanied by a resolution granting signature authority to that individual as duly ratified by the governing body of the entity.

SO ORDERED THIS 15 DAY OF July, 2020.

Becky W. Keogh
BECKY W. KEOGH, DIRECTOR
ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT,
DIVISION OF ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

KIRBY SPECIALTIES CORPORATION

BY: Danny Kirby (Signature)

Danny Kirby (Typed or printed name)

TITLE: President

DATE: 07/06/2020

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