

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

AFIN: 47-01041

LIS No. 18-033

MISSISSIPPI COUNTY ROAD DEPARTMENT
795 NORTH COUNTY ROAD 599
LUXORA, ARKANSAS 72358

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 Mississippi County Road Department (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 May 24, 2017, Respondent demolished or caused to be demolished a structure formerly located near 4701 Memorial Drive, Blytheville, Mississippi County, Arkansas 72358 ("the Site").
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 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)(A) 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 May 19, 2017, ADEQ received a complaint regarding the demolition of a structure located at the Site.

8. On May 24, 2017, ADEQ personnel conducted an investigation of the complaint.

9. The investigation revealed that Respondent had failed to conduct or have conducted an 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).

10. Respondent failed to submit a written NOI and appropriate NOI fee to ADEQ at least ten (10) working days prior to commencing the demolition activity. As noted in paragraph 9 of the Findings of Fact, no asbestos inspection was conducted prior to the demolition activity; therefore, the appropriate fee amount could not be determined at this time. Such failure violates APC&EC Reg.21.601, and therefore violates Ark. Code Ann. § 20-27-1007(4).

11. In a letter dated September 26, 2017, ADEQ informed Respondent of the compliance issues identified during the complaint investigation conducted on May 24, 2017. This letter was intended to give Respondent an opportunity to review the issues identified and submit any additional information Respondent deems appropriate.

12. On October 4, 2017, ADEQ received a response to the September 26, 2017 letter from Respondent and Mississippi County Judge Terri Brassfield. Respondent stated that new management is in place at the Road Department. Mississippi County Judge Terri Brassfield stated that the demolition was conducted under the direction of former Mississippi County Judge Randy Carney. Mississippi County Judge Terri Brassfield stated that the demolition was done to help the Westminster Village where there are numerous dilapidated structures that are dangerous and hazardous to senior residents living there.

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 **SEVEN HUNDRED FIFTY**

DOLLARS (\$750.00), or one-half of the penalty, **THREE HUNDRED SEVENTY-FIVE DOLLARS (\$375.00)** if this CAO is signed and returned to the Air Enforcement Section, ADEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317, prior to 4:00 p.m. on **April 2, 2018**. 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 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 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.

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.

11. This Order has been reviewed and approved by the Quorum Court of Mississippi County in a duly convened meeting with a quorum present. It is the intention of the Quorum Court of Mississippi County to be bound by the terms appearing in the Order. A copy of the Resolution or Minutes of the Quorum Court meeting is attached as Exhibit A.

12. The Quorum Court of Mississippi County has authorized the County Judge to sign this Order on behalf of the County.

13. The Quorum Court of Mississippi County has authorized the County Judge or Treasurer to expend funds for compliance activities required by this Order including, but not limited to, the payment of a civil penalty in the amount listed in the ORDER AND AGREEMENT Paragraph 2.

SO ORDERED THIS 2nd DAY OF April, 2018.

Becky W. Krogh
BECKY W. KROGH, DIRECTOR

ARKANSAS DEPARTMENT OF
ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

MISSISSIPPI COUNTY ROAD DEPARTMENT

BY Terri Brassfield (Signature)

Terri Brassfield (Typed or printed name)

TITLE: Co. Judge

DATE: 3-26-18

**FINANCE COMMITTEE MEETING
MARCH 19, 2018 1:30P.M. ANNEX BLDG., BLYTHEVILLE, AR**

ATTENDANCE: Chairman Justice Michael White, Justice Barry Ball, Justice Ken Kennemore, Justice Bill Nelson, Justice Neil Burge, Justice Aaron Fleeman, Justice Rick Ash, Justice Alvin Clay, Justice Jo Ann Henton, Road Department Supervisor, Harold Benham; Assessor, Harley Bradley; Finance Director Kelli Jones; Sheriff Dale Cook, Matthew Cook; Treasurer Peggy Meatte; OEM, Wayne Reynolds; Courier News, Grayson Williams; Judge Terri Brassfield

1. Meeting was called to order by Justice Michael White.
2. Justice White stated that 9 of the 11 Justices were present with 4 Elected Officials.
3. The end of February County General has a balance of \$1.2 million, \$1 million plus in a CD, Solid Waste \$723,000.00. Economic Development is strong, \$ 5.3 million in the CD fund and \$1.3 million in the operating fund. The tax funds are now starting to pay back. The County will see an increase in revenues for 2018. The County employees have received their 1st paycheck with the raise that was given last month. JP's are not included in the pay raise. Solid waste has repaid \$225,000.00 of the \$750,000.00 that was transferred from County General in 2016. They expect to make another payment this year.
4. Justice Burge reviewed a letter from the Arkansas Natural Resources Commission that the project for construction of a waste disposal cell and ancillary facilities at the County landfill is complete. Currently there is a balance of \$212,261.88 in the construction fund. With no other project related expenses remaining, this balance (plus any accrued interest) will be applied to the principal of the loan along with the regular scheduled loan payment due June 1, 2018. The length of the loan will be shortened. The payment in June is \$165,918.00.
5. Jail Fees: The Supreme Court ruled in favor of Mississippi County. They agreed on every point in the Court case. City of Blytheville will owe back jail fees. The next step will be for the Attorneys for the City of Blytheville and Mississippi County and a Financial Representative from Blytheville and the County to meet to discuss a payment plan. Justice White will be the Financial Representative for the County. The Quorum Court has the responsibility of setting the daily fee. The fee is \$55.00 and is still in effect.
6. Assessor, Harley Bradley has sent the bills for the Pilot Agreements as of the 1st of March. Mr. Bradley thinks we should start receiving some of the payments in April.
7. County Judge, Terri Brassfield introduced Harold Benham, Road Department Supervisor. Mr. Benham replaced Don Lasater after his retirement. Judge Brassfield said what a good job Mr. Benham is doing. Mr. Benham explained he was working on ways to save the Road Department money. He is contacting businesses to be able to buy blades, tires, culverts, etc. in bulk. Mr. Benham explained he has 10 graders that are assigned to

blocks. The graders cover about 5 miles per day. Weather permitting they are able to cover the County roads in 2 weeks.

8. The County Judge brought to the attention of the Justices a fine from ADEQ. The fine was given because there was not an asbestos inspection on a building that was demolished at Westminster Village. The fine is \$750.00. ADEQ will reduce the fine to \$375.00 if paid by April 2, 2018. Justice White asked for a motion. Motion was made by Justice Ken Kennemore, second by Justice Barry Ball. Motion passed. The County Judge was given permission to pay the fine to ADEQ by April 2, 2108.

9. Meeting was adjourned.

Minutes submitted by: Cindy George