

**ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY**

IN THE MATTER OF:

AFIN: 47-01027

LIS No. 17-042

MISSISSIPPI COUNTY, ARKANSAS  
200 WEST WALNUT, ROOM 204  
BLYTHEVILLE, AR 72315

**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, Arkansas (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, February 24, 2016, Respondent demolished or caused to be demolished the former Osceola City/County Jail, formerly located at 300 South Poplar in Osceola, Mississippi County, Arkansas 72370.
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) 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. Regulation 21, Chapter 4, includes the following definitions:

a. "Facility" means any institutional, commercial, public, industrial, school, or residential structure, installation, or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units); any ship; and any active or inactive waste disposal site. For purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building. Any structure, installation or building that was previously subject to this regulation is not excluded, regardless of its current use or function.

b. "Owner or operator of a demolition or renovation activity" means any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both.

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

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

8. On February 24, 2016, ADEQ received an anonymous complaint alleging noncompliance with APC&EC Regulation 21 for asbestos renovation and demolition activities at 300 South Poplar in Osceola, Arkansas 72370.

9. On February 25, 2016, ADEQ personnel contacted via telephone Randy Carney, County Judge for Mississippi County. During the discussion, ADEQ personnel explained applicable regulations for APC&EC Regulation 21 regarding asbestos inspections and demolitions.

10. During the conversation, ADEQ personnel asked Mr. Carney if an asbestos survey was conducted prior to demolition at 300 South Poplar and if a Notice of Intent (NOI) was submitted to ADEQ. Mr. Carney stated that the demolition of the structure in question was almost complete. In addition, Mr. Carney stated that the necessary documents to correct the issue will be provided to ADEQ.

11. In a response dated March 22, 2016, Respondent submitted a NOI. This NOI included the following information.

- a. This NOI is for a demolition of the Osceola Jailhouse in Mississippi County, Arkansas.
- b. The owner of the facility is Mississippi County, and the contact person is County Judge Randy Carney.
- c. The demolition dates listed in the NOI are February 22, 2016 to February 26, 2015.
- d. Wil Allen, Landfill Supervisor, is listed as the contractor.

- e. No inspector was listed as required by APC&EC Regulation 21.606(R) for this NOI.
- f. This NOI indicated that a response was “not applicable” to the APC&EC Regulation 21.606(K) requirement that an NOI include a description of work practices and engineering controls to be used to prevent emissions of asbestos at the demolition site.
- g. The response provided no other information about the presence or absence of asbestos in the Jailhouse.
- h. The NOI contained no information to demonstrate that an asbestos inspection was conducted prior to demolition.

12. Respondent failed to conduct or have conducted a thorough asbestos inspection of the affected facility prior to beginning demolition. As noted in paragraph 10 of the FINDINGS OF FACT, Respondent failed to provide documentation that an asbestos inspection was conducted prior to the demolition activity. Such failure violates APC&EC Regulation 21.501, and therefore violates Ark. Code Ann. § 20-27-1007(4).

13. Respondent submitted an NOI to ADEQ on March 22, 2016 as noted in paragraph 11 of FINDING OF FACT. However, demolition activities began on or about February 24, 2016, as noted in paragraph 1 of FINDING OF FACT. Therefore, 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. Such failure violates APC&EC Regulation 21.601, and therefore violates Ark. Code Ann. § 20-27-1007(4).

#### **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 **TWO THOUSAND EIGHT HUNDRED DOLLARS (\$2,800.00)**, or one-half of the penalty, **ONE THOUSAND FOUR HUNDRED DOLLARS (\$1,400.00)** if this Order 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 9, 2017**. Payment is due within thirty (30) calendar days of the effective date of this Order. 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 Number 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 applicable 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 \_\_\_\_.

12. The Quorum Court of Mississippi County has authorized the County Judge to sign this Order on behalf of the County. A copy of the Resolution or Minutes of the Quorum Court meeting is attached as Exhibit \_\_\_\_.

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 noted in Paragraph 2 of the ORDER AND AGREEMENT. A copy of the Resolution or Minutes of the Quorum Court meeting is attached as Exhibit \_\_\_\_.

SO ORDERED THIS 2nd DAY OF June, 2017.

Becky W. Keogh  
BECKY W. KEOGH, DIRECTOR

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

MISSISSIPPI COUNTY, ARKANSAS

BY: Randy L. Carney (Signature)

Randy L. Carney (Typed or printed name)

TITLE: County Judge

DATE: 5/25/17

BY: \_\_\_\_\_ (Signature)

\_\_\_\_\_ (Typed or printed name)

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_