

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

IN THE MATTER OF:

AFIN: 16-01808

LIS No. 19-105

SHANNON KEE CONSTRUCTION, LLC  
901 NORTH CHURCH STREET  
JONESBORO, AR 72401

**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 Shannon Kee Construction, LLC (Respondent) and the Director of the Division of Environmental Quality<sup>1</sup> (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 December 17, 2018, Respondent demolished or caused to be demolished a structure formerly located at 215 Union Street, Jonesboro, Craighead County, Arkansas 72401 (the Site).

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<sup>1</sup> 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.

*[Handwritten signature]*

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. §20-27-10020(a) authorizes DEQ 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(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 activity" as defined in APC&EC Regulation 21, Chapter 4.

7. Pursuant to APC&EC Regulation 21.501, "The owner or operator of a demolition, renovation, or response action shall conduct, or have conducted, a thorough inspection of the affected facility or part of the facility for the presence of asbestos . . . prior to the commencement of the demolition, renovation, or response action."

8. Pursuant to APC&EC Regulation 21.601, "For any demolition of a facility or

facility component (even if no asbestos is present), the owner or operator shall submit a written NOI to the Department . . . at least 10 working days before any demolition activity begins. Such notice must be accompanied by the required fee . . .”

9. On December 10, 2018, the Asbestos Section received a complaint regarding demolition activities at the Site.

10. On December 17, 2018, DEQ personnel investigated the complaint. Upon arriving at the Site, DEQ personnel discovered the structure had already been demolished and that demolition debris was still being removed.

11. The investigation revealed that Respondent failed to conduct or have conducted a thorough 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).

12. The investigation further revealed that Respondent failed to submit a written NOI and appropriate NOI fee to DEQ at least ten (10) working days prior to the commencement of demolition activity. Such failure violates APC&EC Reg.21.601, and therefore violates Ark. Code Ann. § 20-27-1007(4).

13. At the time of the investigation, DEQ personnel requested Respondent submit a NOI and an asbestos inspection of the demolition debris.

14. In correspondence dated December 20, 2018, EMTEC, on behalf of Respondent, reported that it performed an asbestos inspection on the remaining debris associated with the demolition at the Site and a visual inspection of the debris piles that were transported off the Site. The report stated that no signs of any suspect asbestos containing materials were identified in the debris except the roofing material that was transported to the Mebbs Disposal Site, located near 910 Strawfloor Road, Jonesboro, Arkansas.

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15. On December 28, 2018, DEQ received Respondent's NOI and appropriate NOI fee.

16. On January 7, 2019, and January 8, 2019, the asbestos containing materials were relocated to the Legacy Landfill located in Craighead County, Arkansas. Legacy Landfill is permitted to accept asbestos material.

17. In correspondence dated February 5, 2019, DEQ informed Respondent of the compliance issues identified during the December 17, 2018 complaint investigation of the Site. This was intended to provide Respondent with the opportunity to review the violations and submit any additional information Respondent deemed appropriate regarding the compliance issues.

18. In correspondence dated April 22, 2019, DEQ informed Respondent that formal enforcement action is proceeding in the case in which Respondent violated APC&EC Reg.21.501 and APC&EC Reg.21.601.

### **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. Within 180 calendar days of the effective date of this CAO, an employee/owner of Respondent shall satisfactorily complete an approved asbestos Contractor/Supervisor training course provided by an Arkansas licensed provider. The course shall adequately address the topics outlined in APC&EC Reg.21.1902.

2. Within thirty (30) calendar days of completing the asbestos Contractor/Supervisor training course referenced in Paragraph 1 of the ORDER AND AGREEMENT of this CAO,

Respondent shall submit a copy of the course completion certificate to:

DEQ, Office of Air Quality  
Enforcement Section  
5301 Northshore Drive  
North Little Rock, Arkansas 72118-5317.

3. In compromise and full settlement of the violations specified in the FINDINGS OF FACT, Respondent agrees to pay a civil penalty of **ONE THOUSAND FOUR HUNDRED FIFTY DOLLARS (\$1450.00)**. 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.

4. 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.

5. 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 |

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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 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. Nothing contained in this CAO shall relieve Respondent of any obligations imposed by any other applicable local, state, or federal laws.

11. 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.

12. 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.

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SO ORDERED THIS 13 DAY OF November, 2019.

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

APPROVED AS TO FORM AND CONTENT:

SHANNON KEE CONSTRUCTION, LLC

BY: [Signature] (Signature)

SHANNON KEE (Typed or printed name)

TITLE: OWNER

DATE: 11/7/19

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