

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

**STELLA JONES CORPORATION
4260 SOUTH ARKANSAS AVENUE
RUSSELL VILLE, ARKANSAS 72802**

**EPA ID: ARD053746749
AFIN 58-00098**

LIS 19- 059

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (CAO) is issued pursuant to the authority of the Arkansas Hazardous Waste Management Act, Ark. Code Ann. § 8-7-20 *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 Stella-Jones Corporation ("Respondent") and the Arkansas Department of Environmental Quality (ADEQ or "Department"), 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 owns and operates a wood processing and treatment facility at 4260 South Arkansas Avenue in Russellville, Pope County, Arkansas ("the Site"). At the Site, green and seasoned wood is treated with creosote to produce railway ties and timbers.
2. The Site contains two (2) drip pads, the North drip pad, which has one (1) treatment cylinder, and the South drip pad, which has two (2) treatment cylinders, operating using the "Boulton Process," whereby the treatment cylinder is charged with wood, and heated preservative is used to heat the wood charge for 1 to 24 hours. At that point, a vacuum is drawn.

Finally, the preservative is returned to the work tank. Tank Farm #3 at the Site contains a working tank (Tank #9), two fresh product tanks, and an evaporator system. This evaporator system receives drip pad wash waters, drippings, and condensates contaminated with creosote, which results in the generation of creosote-contaminated waters that carry hazardous waste code F034. Wastewaters and process residuals are collected and treated in an on-site wastewater treatment unit which is subject to 40 CFR Part 429 Subpart H. As such, this treatment process is regulated under the Clean Water Act as a zero discharge system.

3. Respondent is a Large Quantity Generator of hazardous waste.

4. Ark. Code Ann. § 8-7-204(e) 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 ("the Act") and any regulation or permit issued pursuant to the Act.

5. 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"

6. On November 28, 2016, ADEQ received an anonymous complaint alleging that creosote constantly leaks out of the back side of Tank Farm #3, where it runs down the wall and onto the ground, approximately twenty (20) feet from a storm drain. The complaint further alleged that the creosote on the ground is covered up with new gravel.

7. On December 12, 2016, ADEQ conducted a Compliance Evaluation Inspection (CEI) at the Site, in conjunction with a Complaint Investigation. ADEQ mailed the CEI Report to Respondent on January 18, 2017 and the CEI Report is incorporated herein by reference.

8. Based on the findings of the December 12, 2016 CEI, ADEQ identified the following violations of APC&EC Regulation No. 23:

a. ADEQ determined that Respondent had not made hazardous waste determinations on residual creosote, creosote-contaminated condensation and drippage, and creosote-contaminated water collected inside the secondary containment and the condensation released outside the building. The wastewater in the secondary containment was the result of a malfunction, and was ultimately managed in the WWTU. However, the material released from the building in Tank Farm #3 was a hazardous waste (F034), but the facility had not identified it as such. Failure to determine if a solid waste is a hazardous waste is a violation of APC&EC Regulation No. 23 § 262.11, which states in part, "A person who generates a solid waste...must determine if that waste is a hazardous waste." This is also a violation of Ark. Code Ann. § 8-7-205(1).

b. ADEQ observed that creosote-contaminated condensation and drippage (F034) had exited the enclosure and secondary containment of Tank Farm #3 and was dripping on the gravel drive near the exterior wall of Tank Farm #3. The pattern of wetness and sheening along the gravel drive indicated that the F034 condensation and drippage was leading to an absorbent pig surrounding a nearby storm drain. Failure to engage in proper hazardous waste management and allowing hazardous waste to enter the environment is a violation of APC&EC Regulation No. 23 § 2(d) which states in part, "Any of the following acts shall be considered a violation of this Regulation . . . (d) To engage in hazardous waste management contrary to the provisions of this Regulation or in such a manner or place as to create or as is likely to be created a public health hazard...[.]" This is also a violation of Ark. Code Ann. § 8-7-205(1).

9. On February 21, 2017, ADEQ received a response to the CEI Report.

10. On June 12, 2018, Respondent and counsel also met with ADEQ to discuss the CEI Report stating that following the CEI, gravel and dirt impacted by the releases had been removed from the affected area and disposed of as hazardous waste.

11. On June 26, 2018 Respondent mailed documents to the Department demonstrating that repairs and replacement parts had been completed within Tank Farm 3. These measures were completed to mitigate condensation, eliminate potential pathways for liquid migration from the farm or accumulation within secondary containment, with affected soil being drummed and disposed of at a TSD facility.

ORDER AND AGREEMENT

Wherefore, Respondent and ADEQ do hereby stipulate and agree as follows:

1. Upon the effective date of this CAO, Respondent shall submit documentation to ADEQ that a hazardous waste determination has been conducted on any material or condensation that has been released, in accordance with APC&EC Regulation No. 23 § 262.11.

2. Within thirty (30) calendar days of the effective date of this CAO, Respondent shall submit documentation to ADEQ demonstrating that no hazardous waste is being discharged from Tank Farm #3 and entering the environment.

3. Within thirty (30) calendar days of the effective date of this CAO, Respondent shall submit documentation to ADEQ that the area outside of Tank Farm #3 where contaminated gravel and soil was located has been properly remediated. Documentation shall include, but is not limited to analytical results from an ADEQ-certified laboratory demonstrating that soil samples confirm no contamination remains.

4. Upon the effective date of this CAO, Respondent shall conduct an Internal

Compliance Audit of all hazardous waste management units and related activities. The Internal Compliance Audit shall be of sufficient scope to identify any instances of noncompliance with applicable hazardous waste management requirements whether identified by the aforementioned CEI Report or not.

5. Within thirty (30) calendar days of the effective date of this CAO, Respondent shall submit a report to ADEQ describing actions taken to achieve and maintain compliance with respect to any instances of noncompliance detected by the CEI Report and the Internal Compliance Audit. The report will be subject to ADEQ approval. If ADEQ does not approve the report, in whole or in part, because the actions taken by Respondent were insufficient to achieve compliance with applicable requirements, Respondent shall undertake any additional actions identified by ADEQ in order to achieve and maintain compliance with the applicable requirements.

6. Within sixty (60) calendar days of the effective date of this CAO, Respondent shall conduct a Pollution Prevention Study (PPS) to investigate ways to reduce the amount of waste from the facility and submit a Report of Findings specific to the PPS to ADEQ for review and approval.

7. 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 CAO.

8. All submittals required by this CAO, excluding the requirement for the payment submittal in Paragraph 10 below, shall be electronically emailed to enforcement@adeq.state.ar.us, and submitted by Certified Mail or hand delivered to Scott McDonald, Enforcement, Office of Land Resources, ADEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317.

9. All submittals shall be subject to applicable review fees pursuant to APC&EC Regulation No. 23 § 6(t).

10. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500.00). Payment is due within thirty (30) calendar days of the effective date of this CAO. Such payment shall be made payable to ADEQ, Attention: 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 of collection, as well as all other lawful fees and penalties.

11. 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 CAO

12. If Respondent fails to submit to ADEQ any reports or plans, or meet any other requirement of this CAO within the applicable deadline established in the CAO, 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 CAO.

13. 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.

14. ADEQ may grant an extension of any provision of this CAO, provided that Respondent requested such an extension in writing and provided that the delay has been, 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 no 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 that is attributable to such circumstances, shall rest with Respondent.


15. Nothing contained in this CAO shall be construed as a waiver of ADEQ's enforcement authority over violations not specifically addressed herein, nor does this CAO exonerate past, present, or future conduct that 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 CAO be deemed in any way to relieve Respondent of its responsibilities for obtaining or complying with any necessary permits or licenses.

16. This CAO 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 CAO is given. ADEQ retains the right and discretion to rescind this CAO based on comments received within the thirty-day public comment period or based on any other considerations that may subsequently come to light. Additionally, this CAO is subject to being

reopened upon APC&EC initiative or in the event a petition to set aside this CAO is granted by the Commission.


17. By virtue of the signature appearing below, the individual represents that he or she is an Officer of Respondent, being duly authorized to execute and bind Respondent to the terms contained herein. Execution of this CAO by an individual other than an Officer 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 21 DAY OF June 2018⁷


BECKY W. KEOGH
DIRECTOR
ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

STELLA-JONES CORPORATION

BY: Signature: 
Print Name: PATRICK D STARK
Title: V. P. EHS US OPERATIONS
Date: 6/11/19