

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Terra Renewal Services, Inc.
3308 Bernice Ave.
Russellville, AR 72802

LIS No. 20- 188
Permit No. 5094-WR-2
AFIN 66-01624

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (“Order”) is issued pursuant to the authority of the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-101 *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C. § 1311 *et seq.*, and the regulations and rules issued thereunder by Arkansas Pollution Control and Ecology Commission (APC&EC).

The issues herein having been settled by the agreement of the Terra Renewal Services, Inc. (Respondent) and the Division of Environmental Quality¹ (DEQ or “Division”), it is hereby agreed and stipulated that the following FINDINGS OF FACT and ORDER AND AGREEMENT be entered.

FINDINGS OF FACT

1. Respondent operates industrial land application sites (“site”) located in Sebastian County, Arkansas.
2. Respondent is regulated pursuant to the Arkansas Water and Air Pollution Control Act (“Act”), Ark. Code Ann. § 8-4-101 *et seq.*

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 Department of Energy and Environment.

3. DEQ is authorized under the Act to issue permits in the state of Arkansas for the operation of disposal systems or any part of them and to initiate an enforcement action for any violation of a permit issued pursuant to the Act.

4. Ark. Code Ann. § 8-4-217(a)(3) provides:

(a) It shall be unlawful for any person to:

...

(2) Place or cause to be placed any sewage, industrial waste, or other wastes in a location where it is likely to cause pollution of any waters of this state;

(3) Violate any provisions of this chapter or of any rule or order adopted by the [APC&EC] under this chapter or of a permit issued under this chapter by the [DEQ].

5. Ark. Code Ann. § 8-4-103(c)(1)(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 rule or permit issued pursuant to the Act.

6. Pursuant to Ark. Code Ann. § 8-4-103(c)(1)(B), “[e]ach day of a continuing violation may be deemed a separate violation for purposes of penalty assessment.”

7. DEQ issued No-Discharge Water Permit 5094-WR-2 (“Permit”) to Respondent on May 31, 2016. The Permit became effective on June 1, 2016, and expires on May 31, 2021.

Inspection

8. On April 13, 2019, an Arkansas Game and Fish Commission Game Warden received a request for service to inspect dead fish on a private pond located at 7607 Bermuda Grass Loop in Hackett, Arkansas. Respondent reported to DEQ in its 2019 Annual Report that waste was land

applied to field TB-11 on April 2, 2019; April 3, 2019; April 8, 2019; April 9, 2019; and April 11, 2019. The reported fish kill occurred two (2) days after any land application of waste on field TB-11 of the Permit.

9. On April 17, 2019, an Arkansas Game and Fish Commission Game Warden inspected a private pond located at 7607 Bermuda Grass Loop in Hackett, Arkansas. The Game Warden noted the presence of an oil-type residue on the surface of the water, dead fish floating on the surface, and a number of fish at the surface that were gasping for air indicating that the water had been depleted of oxygen. The Game Warden referred the matter to DEQ.

10. On April 22, 2019, DEQ received a complaint documenting a fish kill that occurred at a private pond ("Pond") located at 7607 Bermuda Grass Loop, Hackett, Sebastian County, Arkansas.

11. On April 25, 2019, DEQ conducted a complaint investigation in response to the April 22, 2019 complaint and referral from Arkansas Game and Fish Commission. The inspector arrived just after a rainfall event of more than one and one-quarter inches (1.25") of rain occurred earlier that morning. The inspector observed and documented runoff from a waste application site² leaving the application site and flowing into the Pond. The inspector observed and documented dead fish in the pond. No water samples were taken from the Pond by DEQ.

12. On April 25, 2019, DEQ conducted a reconnaissance inspection of Field TB-11. The inspection revealed the following violations:

- a. Runoff and pooling were observed at Field TB-11. Section 1 of the Nutrient Management Plan, dated September 11, 2015, and as incorporated by Part II,

² The waste application site was identified as a site permitted for application of wastewater residuals under DEQ State No-Discharge Permit 5094-WR-2, and is identified as Field TB-11.

Condition 2 of the Permit, states, “application will be at such a rate to insure that no runoff occurs.” Runoff and pooling are violations of Part II, Condition 2 of the Permit and are therefore violations of Ark. Code Ann. § 8-4-217(a)(3).

- b. Vegetation with 100% coverage with minimum of 80% density was not present throughout the area of recent application. Dead vegetation was observed throughout the area of recent application. This is a violation of Part II, Condition 4 of the Permit and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).
- c. Caking, clumping, and cracking were observed on several areas of the application site demonstrating surface applied waste was not evenly distributed over the entire application area. This is a violation of Part II, Condition 10 of the Permit and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).
- d. Application of waste occurred while the ground was saturated, during precipitation events, and when precipitation was expected with twenty-four (24) hours. This is a violation of Part II, Condition 13 of the Permit and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).
- e. The placing of industrial waste on Field TB-11 that is not in compliance with the Permit and where surface flow is likely to carry pollution from the industrial waste to waters of the state is a violation of Ark. Code Ann. § 8-4-217(a)(2) and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).
- f. DEQ traced the surface flow of water from Field TB-11 to the Pond referenced in Paragraphs 8 and 9 above. Discharge of pollutants to waters of the state without first having obtained a permit from DEQ is a violation of Ark. Code Ann. § 8-4-217(b)(1)(E) and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

13. On May 8, 2019, DEQ inquired as to the application methods used to apply waste as documented in the field logs from April 16, 2019, through April 23, 2019. Respondent stated via email that “all of the loads on the field logs I sent were injected.”

14. On May 24, 2019, the Division notified Respondent of the inspection results and requested that Respondent immediately initiate all actions necessary to resolve and correct the violations cited in the inspection report and submit, to DEQ within thirty (30) calendar days of receipt of this letter, a written response describing the corrective actions taken to correct the cited violations. The notification further informed Respondent that the inspection had been referred to enforcement.

15. On June 20, 2019, Respondent submitted a response to the May 24, 2017, letter request enclosing the results from the April 25, 2019 inspection.

16. On July 10, 2019, the Division requested additional information from the Respondent after the inspection response, dated June 20, 2019.

17. On July 26, 2019, Respondent provided an additional response to all requested additional information.

Complaints

18. On May 18, 2019, the Division received two (2) complaints of odor and excessive flies near the permitted land application sites. The Division’s Office of Water Quality does not regulate odor.

19. On May 23, 2019, the Division received a complaint regarding land application during a rain event and odor.

20. On May 29, 2019, the Division received a complaint documenting land application during a rain event.

21. On June 16, 2019 and June 17, 2019, the Division received a complaint of excessive flies near the permitted land application sites.

22. On June 23, 2019, the Division received a complaint documenting the saturated condition of the field alleged to be Respondent's Site. Industrial waste was applied to field TB-12 on June 22-24, 2019, and to field TB-11 on June 23, 2019.

23. On June 25, 2019, the Division received a complaint on the saturated condition of a field alleged to be Respondent's Site.

Additional Information

24. On June 6, 2019, the Division requested daily sludge application records and associated invoices from Respondent.

25. On June 20, 2019, Respondent submitted the additional information requested by the Division on June 6, 2019.

26. A review of the land application records revealed that Respondent applied waste on days where the National Oceanic Atmospheric Administration documented precipitation occurring at the Fort Smith Regional Airport, 17.5 miles from the Site.

27. On October 10, 2019, DEQ received two (2) complaints that Respondent was land applying waste when precipitation was imminent within a 24-hour period. On October 10, 2019, DEQ Inspectors spoke with the owner of the property identified as TB-14 where land application was occurring. The property owner stated that the company doing land application contacted him that morning and said they would cease work due to the radar image of impending rainfall and subsequently the land application company left. Land application when precipitation is imminent within a 24-hour period is a violation of Part II, Condition 13 of the Permit and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3). Weather conditions changed so the Respondent

determined that rain was imminent. Conditions may differ across Sebastian County from those observed at the Fort Smith Regional Airport; however, the area was experiencing intermittent, major storms.

28. DEQ did not provide Respondent with any complaint or inspection report by mail³; therefore, Respondent did not have an opportunity to respond to any complaint or inspection related to the October 10, 2019, complaints.

29. On January 2, 2020, the Division received a complaint of odor and application methods. The Division's Office of Water Quality does not regulate odor.

30. On May 4, 2020, the Division received a complaint regarding odor. The Division's Office of Water Quality does not regulate odor.

31. DEQ did not notify the Respondent of any fish kill in the inspection report transmitted to Respondent until twenty-nine (29) days after the inspection on April 25, 2019. Respondent stated to DEQ that two (2) days prior to the DEQ inspection, Respondent inspected the application fields and did not find any discharge of industrial sludge from the application fields and did not cause any fish kill.

ORDER AND AGREEMENT

WHEREFORE Respondent, neither admitting nor denying the factual and legal allegations contained in this Order, and DEQ do stipulate and agree as follows:

1. Respondent shall comply immediately with all terms and conditions of the Permit.
2. Effective immediately, Respondent shall not land apply waste on fields TB-11 and TB-14

³ The complaint and resulting inspection were placed in the Permit Data System for the Permit.

for a one (1) year period.

3. In the event Respondent determines it will land apply waste on field TB-12 of the Permit during the one (1) year period referenced in the immediately preceding paragraph, thirty (30) calendar days prior to land application Respondent shall submit to DEQ, for review and approval, an Adverse Weather and Alternative Plan for such fields. This Plan shall detail the procedures to address times when the waste cannot be applied to the plan application site(s) due to adverse weather or other conditions.

4. In an effort to aid in odor control, Respondent may only use subsurface injection to land apply waste on fields TB-11, TB-12, and TB-14 of the Permit for a period of three (3) years from the effective date of this Order.

5. On or before the effective date of this Order, Respondent shall install flagging markers for the buffer zone(s) prior to application on fields TB-11, TB-12, and TB-14 according to the Permit.

6. On or before the effective date of this Order, Respondent shall provide a certificate of training according to Standard Operating Procedure that outlines operations and management practices of Respondent according to the Permit and NMP for each employee involved in land application in Sebastian County, Arkansas.

7. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Fourteen Thousand Nine Hundred Dollars (\$14,900.00). Payment is due within thirty (30) calendar days of the effective date of this Order. Such payment of the penalty shall be made payable to the Division of Environmental Quality, and mailed to the attention of:

DEQ, Fiscal Division
5301 Northshore Drive

North Little Rock, AR 72118

In the event that Respondent fails to pay the civil penalty within the prescribed time, DEQ shall be entitled to attorneys' fees and costs of collection.

8. Failure to meet any requirement or deadline of this Order constitutes a violation of this Order. If Respondent should fail to meet any such requirements or deadlines, Respondent consents and agrees to pay on demand to DEQ stipulated penalties according to the following schedule:

- a. First day through fourteenth day: \$100.00 per day
- b. Fifteenth day through the thirtieth day: \$500.00 per day
- c. Each day beyond the thirtieth day: \$1000.00 per day

These stipulated penalties for delay in performance shall be in addition to any other remedies or sanctions that may be available to DEQ by reason of failure by Respondent to comply with the requirements of this Order.

9. If any event, including but not limited to an act of nature, occurs that causes or may cause a delay in the achievement of compliance by Respondent with the requirements or deadlines of this Order, Respondent shall so 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 specified in this Order. 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.

10. DEQ may grant an extension of any provision of this Order, 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 the DEQ promptly, as provided in the preceding paragraph of this Section, shall be grounds for a denial of an extension.

11. All requirements by the Order and Agreement are subject to approval by DEQ. Unless otherwise specified herein, in the event of any deficiencies, Respondent shall, within the timeframe specified by DEQ, submit any additional information or changes requested, or take additional actions specified by DEQ to correct any such deficiencies. Failure to respond adequately to such Notice of Deficiency within the timeframe specified in writing by DEQ constitutes a failure to meet the requirements established by this Order.

12. This Order is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d) and APC&EC Rule 8 and shall not be effective until thirty (30) calendar days after public notice is given. DEQ retains the right to rescind this Order based upon the comments received within the thirty (30) day public comment period. Notwithstanding the public notice requirements, the corrective actions necessary to achieve compliance shall be taken immediately. The publication of this Order shall occur on or about the 10th or 25th day of the month following the date this Order is executed. As provided by APC&EC Rule 8, this matter is subject to being reopened upon Commission initiative or in the event a petition to set aside this Order is granted by the Commission.

13. Nothing in this Order shall be construed as a waiver by DEQ of its enforcement authority over alleged violations not specifically addressed herein. Also, this Order does not exonerate

Respondent from any past, present, or future conduct which is not expressly addressed herein, nor does it relieve Respondent of its responsibilities for obtaining any necessary permits.

14. 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 Order 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.

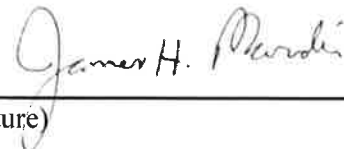
SO ORDERED THIS 30th DAY OF November, 2020.



BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

Terra Renewal Services, Inc.

BY: 

(Signature)

Jimmy Mardis

(Typed or printed name)

TITLE: Chief Environmental Officer

DATE: 11/25/2020
