

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

AFIN: 27-00008

LIS No. 18-057

H. G. TOLER & SON LUMBER COMPANY, INC.
10468 HWY 229 S
LEOLA, ARKANSAS 72084

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.*, Arkansas Pollution Control and Ecology Commission (APC&EC) Regulation 7, APC&EC Regulation 8, APC&EC Regulation 18, APC&EC Regulation 19, and APC&EC Regulation 26.

The issues herein having been settled by agreement of H. G. Toler & Son Lumber Company, Inc. (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. Respondent owns and operates a lumber mill located at 10468 Hwy 229 S in Leola, Grant County, Arkansas.
2. The investigation noted in this CAO covered Air Operating Permit 0193-AOP-R7 (the Permit). The Permit was issued on January 20, 2016, and was still in effect at the time of

inspection.

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

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

...
(3) Violate any provisions of this chapter or of any rule, regulation, or order adopted by the Arkansas Pollution Control and Ecology Commission under this chapter or of a permit issued under this chapter by the Arkansas Department of Environmental Quality.

4. Ark. Code Ann. § 8-4-103(c)(1)(A) as referenced by Ark. Code Ann. §§ 8-4-304 and 8-4-311 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.

5. Pursuant to Ark. Code Ann. § 8-4-103(c)(1)(B) as referenced by Ark. Code Ann. § 8-4-304, "Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment."

6. On June 12 and July 10, 2017, ADEQ conducted routine compliance inspections of Respondent's facility. As part of the inspections, ADEQ reviewed Respondent's Annual Compliance Certification (ACC) and Semi-Annual Monitoring (SAM) report, both of which were dated July 26, 2017.

7. Specific Condition 4 of the Permit requires Respondent to record daily opacity observations from the Wood Waste Boiler with Cyclone (SN-13). Respondent reported in the ACC that on December 28, 2016, it failed to record the opacity observation. Such failure violates Specific Condition 4 of the Permit and therefore violates Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

8. Specific Condition 29 of the Permit requires Respondent to record weekly opacity

observations from the Planer Mill Cyclone (SN-04), Shavings Bin Cyclone (SN-05), and Hog Fuel Bins (SN-12). Respondent reported in the ACC that during the weeks of July 17 through 23, 2016; August 14 through 20, 2016; September 4 through 10, 2016; September 18 through 24, 2016; December 25 through 31, 2016; February 26 through March 4, 2017, and May 28 through June 3, 2017, it failed to record the opacity observations from these sources. Such failures violate Specific Condition 29 of the Permit and therefore violate Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

9. Specific Condition 36 of the Permit requires Respondent to record weekly opacity observations from the Boiler House Fuel Cyclone (SN-08). Respondent reported in the ACC that during the weeks of July 17 through 23, 2016; August 14 through 20, 2016; September 4 through 10, 2016; September 18 through 24, 2016; December 25 through 31, 2016; February 26 through March 4, 2017, and May 28 through June 3, 2017, it failed to record the opacity observations from these sources. Such failures violate Specific Condition 36 of the Permit and therefore violate Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

10. Specific Condition 19 of the Permit requires a biennial tune-up of SN-13 be conducted no more than 25 months after the previous tune-up. A review of records indicates that on October 14, 2014, an initial tune-up of SN-13 was completed. A review of records indicates that a biennial tune-up was completed on May 22, 2017, thirty-one (31) months after the initial tune-up, six (6) months past the date by which it was required to be completed. Such act violates Specific Condition 19 of the Permit and therefore violates Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

11. In correspondence dated August 1, 2017, ADEQ informed Respondent of the

compliance issues identified during the June 12 and July 10, 2017 inspections and review of the ACC and SAM dated July 26, 2017. This was intended to provide Respondent with the opportunity to review the violations and submit information Respondent deemed appropriate regarding the compliance issues.

12. In correspondence dated October 12, 2017, ADEQ informed Respondent that the compliance issues noted in ADEQ's August 1, 2017 correspondence were proceeding through formal enforcement channels.

13. In correspondence dated October 26, 2017, Terracon Consultants, Inc. (Terracon), on behalf of Respondent, responded to the October 12, 2017 correspondence.

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 for instances of noncompliance specified in the FINDINGS OF FACT, Respondent agrees to pay the sum of **FIVE THOUSAND DOLLARS (\$5,000.00)**. 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, nor, except as specifically provided herein, shall this CAO be deemed in any way to relieve Respondent of responsibilities contained in the permit.

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. 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.

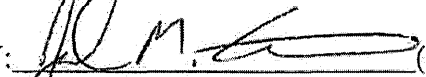
SO ORDERED THIS 28 DAY OF June, 2018.


BECKY W. KEOGH, DIRECTOR

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

H. G. TOLER & SON LUMBER COMPANY, INC.

BY:  (Signature)

John M. Grigsby (Typed or printed name)

TITLE: v. President / General Mgr.

DATE: 6-15-18

RECEIVED
6/15/18