ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

AFIN: 35-01488; 35-01489;
35-01490; 35-01491; 35-01492

LIS No. 17-005

CITY OF PINE BLUFF
202 EAST 8TH AVENUE
PINE BLUFF, ARKANSAS 71601

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 City of Pine Bluff (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 demolished or caused to be demolished structures formerly located at the following addresses in Pine Bluff, Jefferson County, Arkansas 71601:

AFIN	Facility Address
35-01490	2202 Saracen Street, Pine Bluff, AR
34-01489	907 Hickory Street, Pine Bluff, AR
34-01491	1216 West 13th Street, Pine Bluff, AR
35-01488	1400 South Linden, Pine Bluff, AR
35-01492	712 West 5th Avenue, Pine Bluff, AR

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. §20-27-10020(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. On August 26, 2015, Respondent and ADEQ agreed to a Memorandum of Understanding regarding nuisance abatement demolitions.

6. Consistent with the delegated program and state law, nuisance abatement demolitions are not subject to APC&EC Regulation 21 provided certain conditions are met. One such condition is that the abatement demolition debris is disposed of in accordance with the requirements of APC&EC Regulation 22.

7. APC&EC Regulation No. 22.702 requires disposal of asbestos containing material in accordance with APC&EC Regulation No. 21. Respondent did not dispose of abatement demolition debris in accordance with APC&EC Regulation 21.1101 and therefore is subject to the provisions of APC&EC Regulation 21.

8. Each structure in question constitutes a "facility" as defined in APC&EC Regulation 21, § 4.

9. Respondent meets the definition of an "owner or operator of a demolition or renovation activity" as defined in APC&EC Regulation 21.

10. On May 05, 2016, ADEQ personnel conducted an investigation to observe demolition activities at 2202 Saracen Street and 907 Hickory Street in Pine Bluff, Arkansas. During the investigation, Respondent personnel stated that structures scheduled for demolition are primarily hand demolished until recyclables are recovered. Upon recovery of recyclables, the remainder of the structure is then demolished utilizing heavy machinery. Furthermore, Respondent stated that if too much dust is generated, work will cease until the City's Fire Department can wet the structure. During the investigation, it was confirmed that the Respondent was conducting the practice of wetting structures. However, ADEQ observed visible emissions during the demolition process, creating the potential for emissions to leave the site. This suggests that Respondent had not maintained adequately wet materials. This violates APC&EC Regulation 21.901 (D)(1), 21.1001(A)(1), 21.1101(A)(1)(a-c), 21.1101(2)(b) and 21.1101(3), and therefore violates Ark. Code Ann. § 20-27-1007(4).

11. On May 09, 2016, ADEQ and a representative of the United States Environmental Protection Agency, Region 6 (US EPA R6) met with the Respondent to discuss demolition activities and obtain information about past and future demolitions projects. Respondent provided the address of three (3) structures that were in the process of demolition. The structures

were located at 1216 West 13th Street, 1400 South Linden Street, and 712 West 5th Avenue in Pine Bluff, Arkansas. During the visit, Respondent cooperated and displayed a willingness to fully comply with all applicable regulations.

12. On May 9th through May 11th, ADEQ and a representative of US EPA R6 conducted an investigation to observe demolition activities of structures located at 1216 West 13th Street, 1400 South Linden Street, and 712 West 5th Avenue in Pine Bluff, Arkansas. US EPA R6's primary investigation observations related to 217 Laurel Street in Pine Bluff, Arkansas.

13. During the investigation, ADEQ noted that the structures were in various phases of demolition with construction debris staged at each location in preparation for disposal. ADEQ observed each debris pile and the material on the surface appeared to be dry and not adequately wet. This violates APC&EC Regulation 21.901 (D)(1), 21.1001(A)(1), 21.1101(A)(1)(a-c), 21.1101(2)(b) and 21.1101(3), and therefore violates Ark. Code Ann. § 20-27-1007(4).

14. During the investigation, ADEQ noted that the Respondent failed to provide the Department with a written notice of intention to demolish or renovate on the required form with the information required to accompany that notice. The notice of intention to demolish or renovate was required to be provided no later than the following working day after the activity. ADEQ observed that after removal Respondent failed to strip, or contain in leak-tight wrapping, facility components. This violates the following provisions of the Code of Federal Regulations, which are all incorporated by reference through APC&EC Regulation 21.2305: 40 CFR § 61.145 (b)(1); 40 CFR § 61.145 (b)(3)(iii); 40 CFR § 61.145 (b)(4)(except (b)(4)(viii)); 40 CFR § 61.145 (b)(5); 40 CFR § 61.145 (c)(4)-(c)(9), 40 CFR § 61.145(b)(2).

15. Furthermore, ADEQ noted that water was provided by the City's Fire Department alternating between structures. ADEQ observed visible emissions during the demolition process

which indicates that Respondent failed to adequately wet demolished materials. These actions constitute a violation of 40 CFR § 61.150, 40 CFR § 61.145(c)(4), 40 CFR § 61.145(c)(6), and 40 CFR § 61.145(c)(9) which is incorporated by referenced in APC&EC Regulation 21.2305.

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. Effective immediately, Respondent shall demonstrate compliance and maintain support documents to demonstrate compliance with APC&EC Reg.21.901 (D)(1), 21.1001(A)(1), 21.1101(A)(1)(a-c), 21.1101(2)(b), and 21.1101(3). These records shall be maintained onsite and presented to the Department upon request.

2. Respondent shall be required to comply with 40 CFR § 61.145 and 40 CFR § 61.150, which are hereby incorporated by reference as if set forth word-for-word herein. If, however, Respondent is demolishing a facility under a state or local government agency order because the facility is 'structurally unsound and in danger of imminent collapse,' then Respondent shall comply with the following requirements: 40 CFR § 61.145(b)(1); 40 CFR § 61.145 (b)(2), 40 CFR § 61.145 (b)(3)(iii), 40 CFR § 61.145 (b)(4) (except (b)(4)(viii)), 40 CFR § 61.145 (b)(5), 40 CFR § 61.145 (c)(4)-(c)(9); and 40 CFR § 61.150.

3. For the violations stated herein, a civil penalty of **TWELVE THOUSAND DOLLARS ($12,000.00)** has been assessed against Respondent. Said penalty shall be held in abeyance as long as Respondent complies with the requirements of the Memorandum of Understanding, ADEQ CM 2008-2 and paragraphs 1, 2, and 5 of this CAO's Order and Agreement.

4. If Respondent fails to comply with the Memorandum of Understanding, ADEQ

CM 2008-2, or paragraphs 1, 2, and 5 of this CAO's Order and Agreement, then payment shall be due within thirty (30) calendar days of the date of any violations. 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.

5. Within thirty (30) calendar days of the effective date of this CAO, Respondent shall submit to ADEQ a compliance plan and implementation schedule (the Plan) addressing all issues of noncompliance noted in the FINDINGS OF FACT and detailing actions taken to comply with the provisions referenced in paragraphs 1 and 2 of the Order and Agreement of this CAO. ADEQ shall review the Plan and may submit to Respondent a written request for additional information to determine that the proposed procedures adequately address the instances of noncompliance as outlined in the proposed Plan. It shall be the responsibility of Respondent to submit a response to any such written request made by ADEQ within fifteen (15) calendar days. Any failure to submit information requested by ADEQ shall be considered a violation of this CAO.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

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

12. 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.

13. The City Council of the City of PINE BLUFF has authorized the Mayor and City Clerk/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 of TWELVE THOUSAND DOLLARS ($12,000.00).

SO ORDERED THIS 27 DAY OF January, 2016.

Becky W Keogh

BECKY W. KEOGH, DIRECTOR

ARKANSAS DEPARTMENT OF
ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

CITY OF PINE BLUFF

BY: Shirley Washington (Signature)

Shirley Washington (Typed or printed name)

TITLE: Mayor

DATE: 17 January 2017

BY: _____ (Signature)

_____ (Typed or printed name)

TITLE: _____

DATE: _____