

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

IN THE MATTER OF:

**LB Amfuel Real Estate, LLC
601 Firestone Drive
Magnolia, AR 71753**

**LIS No. 24- 103
EPAID: ARD008049298
AFIN 14-00040**

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (CAO) is issued pursuant to the authority of the Arkansas Hazardous Waste Management Act of 1979, Ark. Code Ann. § 8-7-201 *et seq.*, the Remedial Action Trust Fund Act, Ark. Code Ann. § 8-7-501 *et seq.*, Arkansas Pollution Control and Ecology Commission (APC&EC) Rules No. 7, 8, and 23.

The issues herein having been settled by the agreement of LB Amfuel Real Estate, LLC (Respondent) and the Arkansas Department of Energy and Environment, Division of Environmental Quality (DEQ), it is hereby agreed and stipulated that the following FINDINGS OF FACT and ORDER AND AGREEMENT be entered.

FINDINGS OF FACT

1. Respondent operates a fuel cell and coated fabric product manufacturing plant (facility) located at 601 Firestone Drive, Magnolia, Columbia County, Arkansas.
2. The Facility produces a variety of fuel cells for the aerospace industry, along with rubberized coated fabrics and large bladders for storage of liquids.
3. Respondent is a Large Quantity Generator of hazardous waste.
4. Ark. Code Ann. § 8-7-204(c) provides that each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment and authorizes DEQ 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 (Act) and any rules, permits, or plans 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, permit, or order adopted or issued under this subchapter[.]”

6. On March 1, 2023, DEQ conducted a Compliance Evaluation Inspection (CEI) at the Facility. The following violations of APC&EC Rule 23 were identified during the CEI:

- a. DEQ observed ninety-seven (97) fifty-five (55)-gallon containers in the Central Accumulation Area (CAA) behind the Cement House. At least thirty-nine (39) of the containers did not have accumulation start dates. Additionally, the CAA roll-off container for solid hazardous waste did not have an accumulation start date. Failure to mark or label containers with an accumulation start date violates APC&EC Rule No. 23 § 262.17(a)(5)(i)(C).
- b. Two (2) of the fifty-five (55)-gallon containers in the CAA behind the Cement House and the roll-off container were not labeled with the words “Hazardous Waste.” Failure to mark or label containers with the words “Hazardous Waste” violates APC&EC Rule No. 23 § 262.17(a)(5)(i)(A).
- c. Ten (10) of the fifty-five (55)-gallon containers in the CAA behind the Cement House had accumulation start dates; however the oldest accumulation start date was January 31, 2021, with most others being November 10, 2022. Accumulating hazardous waste for greater than ninety (90) days violates APC&EC Rule No. 23 Section 262.17(a).
- d. DEQ observed four (4) of the containers in the CAA behind the Cement House open. Additionally, a third CAA consisting of two (2) fifty-five (55)-gallon

containers in the Nylon Spray room did not have lids. Failure to keep a container holding hazardous waste closed during accumulation violates APC&EC Rule No. 23 § 262.17(a)(1)(iv)(A).

- e. DEQ observed that the majority of the fifty-five (55)-gallon containers located in the CAA behind the Cement House did not have the hazards of the contents listed on the label. Failure to list the hazards of the contents on the label violates APC&EC Rule No. 23 § 262.17(a)(5)(i)(B).
 - f. During the review of facility documents, DEQ determined that the three (3) CAAs were not being inspected weekly. Failure to conduct weekly inspections violates APC&EC Rule No. 23 § 262.17(a)(1)(v).
 - g. During the review of facility records, Respondent could not provide documentation that employees had successfully completed the initial hazardous waste training within six (6) months after the start date of employment. Failure to train employees violates APC&EC Rule No. 23 § 262.17(a)(7)(ii).
 - h. Respondent also failed to maintain a written description of the type and amount of both introductory and continuing training that will be given to each person filling a position related to hazardous waste management. Failure to maintain such documentation violates APC&EC Rule No. 23 § 262.17 (a)(7)(iv)(C).
7. On March 10, 2023, Respondent submitted documentation that thirty-eight (38) unlabeled or overdue containers had been transported off-site. Included in the submittal were photos of the roll-off container with an attached hazardous waste label, date, and indication of hazards.
8. On March 27, 2023, DEQ notified Respondent of the findings of the investigation.

9. On April 28, 2023, Respondent submitted documentation indicating hazardous waste storage areas were being checked weekly and all employees had been properly trained.

ORDER AND AGREEMENT

1. This CAO addresses all violations contained 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 FIFTEEN THOUSAND FIVE HUNDRED DOLLARS (\$15,500.00) or one-half of the full civil penalty of SEVEN THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$7,750.00) if this CAO is signed and returned to the Office of Land Resources, Enforcement Branch, DEQ, 5301 Northshore Drive, North Little Rock, Arkansas, 72118-5317, within twenty (20) calendar days of receipt of this CAO. Payment is due within thirty (30) calendar days of the effective date of this CAO. Such payment of the penalty shall be made payable to DEQ and mailed to the attention of:

Division of Environmental Quality
Fiscal Division
5301 Northshore Drive
North Little Rock, AR 72118

In the event that Respondent fails to pay the civil penalties within the prescribed time, DEQ shall be entitled to attorneys' fees and costs associated with collection as well as all other lawful fees and penalties.

3. All requirements of this CAO are subject to approval by DEQ. In the event of any deficiencies, Respondent shall submit any additional information or changes requested, or take additional actions specified by DEQ to correct any such deficiencies within the timeframe specified by DEQ. Failure to respond adequately in writing within the timeframe specified by DEQ constitutes a failure to meet the requirements established by this CAO.

4. If Respondent fails to meet any requirement of this CAO within the deadline established by the CAO, DEQ may assess stipulated penalties for the delay in the following amounts:

- a. First day through the fourteenth day: \$250.00 per day
- b. Fifteenth day through the thirtieth day: \$1,250.00 per day
- c. Each day beyond the thirtieth day: \$2,500.00 per day

These stipulated penalties for delay in performance shall be in addition to any other remedies or sanctions which may be available to DEQ by reason of Respondent's failure to comply with this CAO.

5. Respondent shall notify DEQ in writing 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 delay, the precise cause of delay, and the measures being taken to correct and minimize the delay.

6. 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 the DEQ promptly, as provided in the preceding paragraph of this Section, shall be grounds for a denial of an extension.

7. Nothing contained in this CAO shall be construed as a waiver by DEQ of its authority over alleged violations not specifically addressed herein. This CAO does not purport in any way to

relieve Respondent of its responsibilities for obtaining any necessary permits or licenses, nor does it relieve Respondent of any other obligations imposed by any local, state, or federal laws. This CAO does not exonerate any past, present, or future conduct not expressly addressed herein.

8. This CAO is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d) and APC&EC Rule No. 8 and shall not be effective until thirty (30) calendar days after public notice is given. DEQ retains the right to rescind this CAO based upon the comments received within the thirty-day public comment period.

9. Notwithstanding the public notice requirements, the corrective actions necessary to achieve compliance shall be taken immediately. The publication of this CAO shall occur on or about the 10th or 25th day of the month following the date this CAO is executed. As provided by APC&EC Rule No. 8, this matter is subject to being reopened upon APC&EC initiative or in the event a petition to set aside this CAO is granted by the APC&EC.

10. By virtue of the signature appearing below, the individual represents that he or she is a Managing Member, 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 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 17 DAY OF June, 2024.

Bailey Taylor
~~CALEB J. OSBOURNE~~ Bailey Taylor ^{interim}
DIVISION OF ENVIRONMENTAL QUALITY, DIRECTOR
CHIEF ADMINISTRATOR, ENVIRONMENT

^{interim}

APPROVED AS TO FORM AND CONTENT:
LB Amfuel Real Estate, LLC

BY:

Signature Faith Elliott

Print Name Faith Elliott

Title Vice President, Operations

Date 6/3/24