

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

**STANLEY FRASER
SECTION 4, TOWNSHIP 2N, RANGE 9W
HIGHWAY 70 & BETHLEY ROAD
KERR, ARKANSAS 72142
EPA ID No. ARR000019901
AFIN 43-00608**

LIS 10- 146

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (hereinafter "Order") is issued pursuant to the authority of the Arkansas Hazardous Waste Management Act (Act 406 of 1979, as amended; A.C.A. § 8-7-201 et seq.), the Arkansas Remedial Action Trust Fund Act (Act 479 of 1985, as amended; A.C.A. § 8-7-501 et seq.), and the Arkansas Pollution Control and Ecology Commission (hereinafter "APC&EC") Regulation No. 23, APC&EC Regulation No. 8, and APC&EC Regulation No. 7. The issues herein, as they pertain to the Stanley Fraser Property, Kerr, Lonoke County, Arkansas (hereinafter "Respondent" or "Stanley Fraser") having been settled by the agreement of Respondent and the Arkansas Department of Environmental Quality - Hazardous Waste Division (hereinafter "ADEQ - HWD"), it is hereby agreed and stipulated by all parties that the Findings of Fact and Order and Agreement be entered herein.

FINDINGS OF FACT

1. Stanley Fraser owns approximately 4.2 acres adjoining Highway 70 near mile marker 1 off Bethley, which is a dirt road. The property is located at Section 4, Township 2N, Range 9W (hereinafter "the Property"). Stanley Frazer purchased the Property approximately seven (7) years ago and operates a metal salvage operation at this location. Stanley Fraser's mailing address is 2105 Virginia Drive, North Little Rock, Arkansas 72118.

2. On March 29, 2010, a Arkansas Department of Environmental Quality – Solid Waste Management Division (hereinafter "ADEQ – SWMD") Inspector performed a Complaint Investigation at the Property. The investigation was in response to a complaint alleging illegal dumping and burning of waste at the Property.
3. During the March 29, 2010, Complaint Investigation, the ADEQ - SWMD Inspector observed a burned area approximately 30'x 20'x 2' along a water filled ditch next to Bethley Road. The Inspector also observed partially burned waste in this area consisting of metals, fuel filters, fuel pumps, old machinery, plastics, wire cable, lumber, wood pallets, 30-gallon metal herbicide containers, 55-gallon metal fertilizer containers, three (3) empty plastic containers of unlabeled/unknown wastes, and other various wastes. He also observed a 30-gallon herbicide container labeled Premerge, Dinitro weed killer leaking a yellow liquid which was flowing onto the road and then into the ditch. Premerge, Dinitro are trade names for the herbicide Dinoseb.
4. During the Investigation, the ADEQ – SWMD Inspector contacted Stanley Fraser by phone regarding the complaint and explained the violations to the Respondent who understood and agreed to clean-up the Site and haul all waste to a Class 1 Landfill and forward copies of the waste receipts with updated photos to the ADEQ – SWMD office. Furthermore, the Respondent understood the herbicides would need to be handled by a licensed hazardous waste company for disposal and could not be disposed of at the Class 1 Landfill.
5. On March 30, 2010, the ADEQ – SWMD mailed Stanley Fraser a copy of their Complaint Investigation Report.
6. On March 30, 2010, the ADEQ – HWD received a referral from the ADEQ – SWMD indicating the possible existence of leaking containers of herbicides, fertilizers and various containers of mixed wastes.
7. On April 8, 2010, the ADEQ – HWD Inspectors conducted a Complaint and Sampling Investigation at the Property. During the Investigation, ADEQ – HWD observed the burned solid waste pile as well as containers of unknown substances. Laboratory analysis of three

- (3) soil samples collected at the Property confirmed the presence of Dinoseb in the soil and storm water ditch.
8. According to APC&EC Regulation No. 23, Section 261, Subpart D, Dinoseb is an herbicide that carries Environmental Protection Agency (hereinafter "EPA") acute hazardous waste code of P020. Chemicals classified by the EPA with a P Code are generally lethal in small quantities. In addition, Dinoseb is currently under Emergency Suspension by the EPA.
 9. On May 17, 2010, ADEQ received an emailed copy of a hazardous waste manifest for the residue Dinoseb in the container. Mr. Fraser was given a list of several environmental contractors to assess and clean up the property.
 10. Based on the findings of the Complaint Investigation on April 8, 2010, conditions were identified which ADEQ constitutes a violation of APC&EC Regulation No. 23. The violation, as provided below, was identified in the Complaint Investigation Report which was mailed to the Respondent on April 27, 2010, which is hereby incorporated by reference into this Order:
 - a. APC&EC Regulation No. 23, Section 2(d) – Engaging in hazardous waste management contrary to the provisions of APC&EC Regulation No. 23 or in such a manner or place as to create or as is likely to be created a public health hazard or to cause water or air pollution within the meaning of the Arkansas Water and Air Pollution Control Act, as amended (Ark. Code Ann. §§ 8-4-201 *et seq.*).
 11. Respondent agrees to the following Order in full settlement and compromise of the violation of APC&EC Regulation No. 23 as stated herein.

ORDER AND AGREEMENT

1. Upon the effective date of this Order, Respondent shall no longer engage in hazardous waste management contrary to APC&EC Regulation No. 23, Section 2(d) or in such a manner or place as to create or as is likely to be created a public health hazard or to cause water or air

pollution within the meaning of the Arkansas Water and Air Pollution Control Act, as amended (Ark. Code Ann. §§ 8-4-201 *et seq.*).

2. Respondent shall, within thirty (30) calendar days of the effective date of this Order, submit to ADEQ a Sampling and Analysis Plan (hereinafter "SAP") designed to determine the horizontal and vertical extent, rate of migration, type, and concentration of any hazardous substance or pollutant present in the environment at or near the locations identified in the CEI Report and at any other location at the facility where environmental contamination is known, suspected, likely, or is possible to exist based on Respondent's knowledge of past and present activities at the facility. The SAP shall include but not be limited to a Scope of Work and Method of Implementation Plan, a Quality Control and Assurance Plan, and a site Health and Safety Plan. Additionally, the SAP shall include a schedule of implementation not to exceed ninety (90) calendar days from the ADEQ SAP approval date. Respondent shall implement the SAP upon receipt of written approval from ADEQ and shall submit a report of findings to ADEQ within one hundred twenty (120) calendar days from the SAP approval date. If ADEQ determines the SAP fails to accomplish a complete determination of the extent, rate, type, or concentration of released hazardous substances or pollutants in the areas investigated, Respondent agrees, within thirty (30) calendar days of receiving written notification from ADEQ, to amend the SAP to provide for additional sampling and analysis to accomplish the requirements of this paragraph. Respondent shall implement said SAP amendment upon ADEQ approval and report the findings thereof in accordance with an amended implementation schedule.
3. Respondent shall, within thirty (30) calendar days of notification by ADEQ that contamination of the environment has occurred, as determined through ADEQ's assessment and review of the findings resulting from the implementation of the SAP, submit a Remedial Action Plan (hereinafter "RAP") to control or remediate such contamination to the extent necessary to protect human health and the environment. The RAP shall be implemented by Respondent upon receiving written approval from ADEQ. A report documenting the results

of the implementation of the RAP shall be submitted to ADEQ within thirty (30) calendar days following completion of the RAP implementation. If ADEQ determines the RAP implementation fails to accomplish remediation sufficient to protect human health or the environment, Respondent shall, upon receiving written notification from ADEQ, conduct any additional remedial activities ADEQ determines necessary to protect human health and the environment from releases of hazardous substances or pollutants at the facility.

4. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of TWELVE HUNDRED DOLLARS (\$1,200.00), payable in twelve (12) monthly payments of ONE HUNDRED DOLLARS (\$100.00). The first payment is due within thirty (30) calendar days after the effective date of this Order. Each subsequent monthly payment is due on or before that day each month until the civil penalty is paid in full. This civil penalty offer of \$1,200.00 is also contingent upon Stanley Fraser complying with paragraphs 1 through 4 in the Order and Agreement portion of this Order. In the event Stanley Fraser defaults with paragraphs 1 through 4 in the Order and Agreement portion of this Order, the civil penalty amount reverts back to the original full civil penalty amount of SIXTEEN THOUSAND FIVE HUNDRED DOLLARS (\$16,500.00) which will be due and payable upon written notice by ADEQ of default of this Order. All payments shall be made payable to the 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.
5. All submittals shall be subject to applicable review fees pursuant to APC&EC Regulation No. 23, Section 6(t).
6. 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 Order.
7. All submittals required by this Order, excluding the requirement for the payment submittal in paragraph 4 above, shall be electronically emailed to bernhardt@adeq.state.ar.us, or

submitted by Certified Mail or hand delivered, to Karen Bernhardt, Enforcement and Inspection Branch, Hazardous Waste Division, ADEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317.

8. Respondent hereby designates a Project Manager who shall be responsible for overseeing the implementation of the requirements of this Order. The Project Manager shall communicate with ADEQ on all technical issues which arise under this Order and shall be empowered to agree on minor modifications in the implementation of any of the requirements of this Order when such modifications are deemed by ADEQ to further the purpose of this Order. Respondent may change their Project Manager by providing written notice of such change to the ADEQ. The initial Project Manager shall be:

Stanley Fraser
Stanley Fraser Property
2105 Virginia Drive
North Little Rock, AR 72118
Ph No. (501) 771-1903

9. All requirements of this Order are subject to approval by ADEQ. In the event of any deficiencies, Respondent shall, within thirty (30) calendar days of the receipt of written notification by ADEQ, submit any additional information or changes requested, or take additional actions as specified by ADEQ. Failure to adequately respond to the notice of deficiency within thirty (30) calendar days constitutes a failure to meet a deadline and subjects Respondent to the stipulated penalties established in paragraph 10 below, provided that such notice clearly declares that failure to respond within thirty (30) calendar days of receipt is a failure to meet requirements established by this Order.
10. If Respondent fails to submit to ADEQ any reports or plans, or meet any other requirement of this Order within the applicable deadline established in the Order, ADEQ may assess stipulated penalties for delay in the following amounts:
 - a. First day through the tenth day: \$500/day or less
 - b. Eleventh day through the twentieth day: \$750/day or less

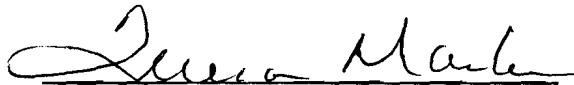
- c. Twenty-first day through the thirtieth day: \$1,000/day or less
- d. Each day beyond the thirtieth day: \$2,500/day or less

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 Order.

11. If any event occurs, including but not limited to Natural Disasters, which causes or may cause delay in the achievement of compliance by Respondent with the requirements of this Order, 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 deadline has passed. The written notice shall describe in detail the anticipated length of delay, the precise cause of delay, the measures taken and to be taken to minimize the delay, and the timetable by which those measures are implemented.
12. The ADEQ may grant a written extension of any provision of this Order, provided that Respondent requested such an extension in writing and provided that the delay or anticipated delay has been 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 fault of Respondent and the length of delay attributable to such circumstances shall rest with Respondent.
13. Nothing contained in this Order shall be construed as a waiver of ADEQ's enforcement authority over violations not specifically addressed herein; nor does this Order exonerate past, present, or future conduct which 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 Order be deemed in any way to relieve Respondent of its responsibilities for obtaining or complying with any necessary permits or licenses.

14. This Order is subject to public review and comment in accordance with A.C.A. Section 8-4-103 (d) and is therefore not effective until thirty (30) calendar days after public notice of the Order is given. ADEQ retains the right and discretion to rescind this Order based on comments received within the thirty-day public comment period or based on any other considerations which may subsequently come to light. Additionally, this Order is subject to being reopened upon Arkansas Pollution Control & Ecology Commission initiative or in the event a petition to set aside this Order is granted by the Commission.
15. This Order shall apply to and be binding upon ADEQ and upon Respondent, their successors and assigns. Any changes in ownership or corporate status of Respondent, including, but not limited to, and transfer of shares, assets or other real or personal property, shall in no way alter Respondent's obligations under this Order.
16. Each of the undersigned representatives of the parties certifies that he or she is authorized to execute this Order and to legally bind that party to its terms and conditions.

SO ORDERED THIS 18th DAY OF Aug., 2010.



**TERESA MARKS
DIRECTOR**

APPROVED AS TO FORM AND CONTENT:

STANLEY FRASER

BY: Signature 

Print or Type Name ~~Stanley P Fraser~~ STANLEY P FRASER

Title owner

Date 8-18-10